No. 82-432

Office-Supreme Court, U.S.
FILED
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ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

LOCAL NO. 82, FURNITURE AND PIANO MOVING, FURNITURE STORE DRIVERS, HELPERS, WAREHOUSEMEN, AND PACKERS; BART GRIFFITHS, SECRETARY-TREASURER, LOCAL NO. 82; GEORGE HARRIS, PRESIDENT, LOCAL 82; PHILLIP PIEMONTESE, CHAIRMAN OF THE ELECTION COMMITTEE OF LOCAL NO. 82; and JOHN DOE, JAMES DOE and JEROME DOE, MEMBERS OF THE ELECTION COMMITTEE OF LOCAL NO. 82,

Petitioners,

RAYMOND DONOVAN, SECRETARY OF LABOR,

Intervenor,

v.

JEROME CROWLEY, ANTHONY COYNE, JOSEPH FAHEY, ROBERT LUNNIN, JAMES HAYES, GERALD OWENS, JOHN LYNCH, JOSEPH TRASK, JOSEPH MONTAGNA, and DENNIS BATES,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the First Circuit

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JOINT APPENDIX

DAVID PREVIANT
GARY S. WITLEN
Counsel of Record
25 Louisiana Avenue, N.W.
Washington, D.C. 20001
(202) 624-7466

KATHRYN NOONAN
27 School Street
Boston, Massachusetts
02108
(617) 523-1624

Counsel for Petitioners

MARK STERN
Counsel of Record
GOLDSTEIN, PRESSMAN, STERN & HILLER
678 Massachusetts Avenue
Cambridge, Massachusetts 02139
(617) 492-2211

Counsel for Respondent

REX E. LEE
Counsel of Record
JOHN H. GARVEY
Department of Justice
10th & Constitution Avenues, N.W.
Washington, D.C. 20530
(202) 633-2217

Counsel for Intervenor

PETITION FOR CERTIORARI FILED SEPTEMBER 13, 1982
CERTIORARI GRANTED JANUARY 24, 1983

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FROM DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

[Case Title Omitted in Printing]

DOCKET ENTRIES

DATE	NR.	PROCEEDINGS
1980		
Dec. 1	01	Complaint filed.
	02	Motion for a disinterested party to serve process filed and ALLOWED by the Court, David Bolden, Deputy Clerk.
	03	Motion for preliminary injunction, filed, c/s.
	04	Order to show cause issued, returnable 12/5/80 at 9 AM. entered 12/4/80.
	05	Appearance of Ms. Noonan for deft filed.
	06	Return of summons wso various defts' filed.
	07	Affidavit of Robert Lunnin filed.
	08	Affidavit of Jerome Crowley filed.
	09	Affidavit of Anthony Coyne filed.
	10	Affidavit of Joseph Montagna filed.
	11	Modified motion for prel inj filed.
	12	Affidavit of various members of Local 82 filed.
	13	Affidavit of James H. Packer filed.
	14	Letter from Mr. Harris to Mr. Lunnin, the Executive Board Decision from the trial of 11/24/80, filed.
	15	Notice of Amendment of complaint filed.
Dec. 5		KEETON, D. J. Rptr. Jones-Horwitz; hearing on application for preliminary injunction; arguments; briefs on jurisdictional question due on Monday, 12/8/80 at 11 AM.

DATE	NR.	PROCEEDINGS
1980		
Dec. 8	16	Pltfs' contents of memo of law filed.
	17	Supp citations to pltfs' memo of law filed.
	18	Pltfs' memo of law filed.
	19	Defts' memo of law filed.
	20	Affidavit of Maxine Tassinari-Teixeira filed, c/s.
	21	Pltf's proposed findings of fact and conclusions of law filed. c/s.
Dec. 11	22	Affidavits of various members of Local No. 82 filed.
	23	Affidavit of Christopher Fahey filed.
Dec. 12		*KEETON, D.J.* Rpt. Jones-Horowitz; hearing; defts' challenge to jurisdiction denied; deft to file response to pltfs' proposed findings by Monday 12/15/80 at noon; should deft wish to file substitute findings, it must file them on pltf by 12/15/80 at noon; if so, pltf must respond by 12/16/80; deft to deliver specified discovery materials to plts on 12/15/80 at noon; further hearing at 4:05 p.m. arguments; bond not required T.R.O. entered 4:20 p.m.; Prel. Inj. recessed until 9 A.M. 12/16/80 or as soon thereafter as the hearing may continue.
Dec. 15	24	*KEETON, DJ.* TEMPORARY RESTRAINIG ORDER, dated December 12, 1980, entered.
15	25	*KEETON, DJ.* Memorandum, dated December 12, 1980, entered.
13		Received in the Clerk's Office, Sealed, on December 13, 1980 at 9:50 A.M. Ballot Box with ballots, received by Daniel F. Loughry,

DATE	NR.	PROCEEDINGS
1980		
		Deputy Clerk, also received returned ballots as undelivered in envelope, both received sealed and put in vault.
16	26	Transcript of hearing on Friday, December 12, 1980, filed.
22	27	Answer to amended complaint, filed.
19		*KEETON, D.J.* Rpt. Jones-Horwitz; hearing resumed; pltf's evid, recess; pltf's evid. continues; recessed until 12/23/80 at 9:00 a.m.
23		*KEETON, D.J.* Rpt. Janes; hearing resumed; pltf's evid continues; pltf's rest; recess; deft's evidence; recessed until 12/24/80 at 9:00 a.m.
24		*KEETON, D.J.* Rpt. Janes; hearing resumed; deft's evidence continues; recessed until 12/30/80 at 9:00 a.m.
30		*KEETON, D.J.* Rpt. Scott; hearing resumed; deft's evidence continues; recess.
31		*KEETON, D.J.* Rpt Scott; hearing resumed; deft's evidence continues; deft rests; pltf's rebuttal; rests; deft's rebuttal; rests; require submissions from both parties by Friday Jan 30, 1981 recessed.
1981		
Jan. 9	28	Letter to the Court from Ms. Noonan, Esq, filed.
9	28	*KEETON, D.J.* Rpt. Jones-Horwitz; conference; timetable previously established deferred by one week; further conf. 1/15/81.

DATE	NR.	PROCEEDINGS
1981		
15		*KEETON, D.J.* Rpt. ; conference; pltfs memo due 1/20/81; timetable previously established deferred though next hearing; hearing set for 1/23/81 at 12 noon or 1/28/81 at 2:30 p.m.
15	29	Stipulations of the defts, filed.
16	30 thru 33	Transcripts of hearings, filed.
Jan. 20	34	Letter to Judge Keeton, from Mr. Pressman, Esq. filed.
20	35	Pltfs' memo in opposition to the defts' proposal of Jan. 15, 1981, filed c/s
20	36	Proposed Order, filed.
22	37 thru 41	Transcripts of hearings and first day of trial, filed.
	42	Supp. stipulations of the defts filed. c/s.
	43	Motion for leave to allow Garry S. Witlen to practice . . . filed, c/s.
	44	Deft's supp memo filed, c/s.
23	45	Stipulation of the parties, filed.
28	46	Affidavit, filed.
30	47	Defts' second supp memo filed, c/s.
23		KEETON, D.J. Rptr Jones-Horwitz; hearing; motion for Mr. Witkin's appearance allowed; in absence of stipulation, Court vacates stay of discovery as of 5:00 PM today. Further submissions due 1/30/81 if stipulation reached; further hearing 2/9/81 at 2 PM. If no stipulation reached, further submissions due three days before 2/9/81 hearing.

DATE	NR.	PROCEEDINGS
1981		
30	48	Pltfs' motion to amend complaint . . . filed.
	49	Memo in support of 48 filed.
	50	Pltf's reply memo filed.
	51	C/s filed.
Feb. 9	52	Defts' memo in opposition to pltfs' motion to amend complaint, filed.
13	53	*KEETON, D.J.* Order dated Feb. 12, 1981, entered, cc/cl.
17	54	Response of defts to proposed order concerning the conduct of the election, filed, c/s.
18	55	Pltfs' objections to proposed Order of the Court dated Feb. 12, 1981, filed.
Feb. 18	56	Supplemental reply Memo, filed.
20		KEETON, D.J. Rptr Jones-Horwitz; hearing; motion regarding objections to mootness denied; motion of lack of jurisdiction denied; proposed order reviewed; further hearing on 2/24/81 at 12 NOON; motion to amend the complaint; arguments; ruling on this motion deferred; motion regard supplementary relief; arguments; ruling deferred.
23	57	Copy of letter to Ms. Noonan and Mr. Pressman from Mr. Reilly, filed.
23	58	Pltfs' supplemental memorandum on motion to amend complaint, filed, c/s.
March 3	59	Defts' proposed findings of fact with regard to the issued raised in the second amended complaint, filed.
4	60	Defts' motion to dismiss pltfs' second amended complaint, filed. c/s

DATE	NR.	PROCEEDINGS
1981		
4	61	Memo in support of #60, filed. c/s
4	62	Affidavit of Richard C. Bell, filed. c/s
9	63	Pltfs' response to defts' proposed findings of fact with regard to the issues raised in the second amended complaint; filed.
6		*KEETON, DJ.* Rpt. Jones-Horwitz; hearing; pltf to file memo on motion to dismiss then Court will take it under advisement; Court will take deft's request for a ruling that plts have failed to meet their burden on dues issue; defts evidence. pltf's evidence.
11	64	Defts' motion for leave to supplement the record, filed. c/s
11	65	Transcript of hearing on Friday, Feb. 20, 1981, filed.
11	66	Transcript of hearing on Friday, March 6, 1981 filed.
18	67	Defts' memorandum in support of proposed findings of fact and motion to dismiss amendments to the complaint, filed. c/s
18	68	Memo of law regarding pltfs' amended claims, filed. c/s
19	69	Defts' memo concerning the posting of a bond pursuant to rule 65(c) F.R.C.P., filed. c/s
20	70	Pltfs' motion for leave to supplement the record and supplemental objection to proposed order of the Court, filed.
23	71	Supplemental memorandum of law regarding pltfs' amended claims, filed. c/s

DATE	NR.	PROCEEDINGS
1981		
March 24	72	Defts' memo in opposition to pltfs' motion for leave to suppement the record, filed. c/s
30	73	Transcript of hearing on Thursday, Jan. 15, 1981, filed.
Apr. 20	74	Defts' response to pltfs; motion for 4/8/81 filed, c/s.
30	75	Defts' memorandum in support of their motion to suspend Injunction pending appeal, filed. c/s
May 5	76	Stipulation of the parties regarding language for modified proposed order . . . filed.
8	77	Pltfs' memo in opp to defts' motion to stay inj pending appeal filed.
16	78	Transcript of hearing on 4/23/81 filed.
12/23/80	79	Pltfs' trial memo in support of their motion for injunctive relief regarding the twenty-four month rule
1/23/81	80	Pltfs' motion for supplenetal Preliminary Relief, filed. c/s
2/6/81	81	Letter to Judge Keeton from Mr. Stern, Esq, filed.
2/27/81	82	Copy of letter to Ms. Noonan and Mr. Pressman from Mr. Reilly, filed.
27	83	Defts' proposed modifications to the Court's proposed order, filed.
3/6/81	84	Stipulation of the parties, filed.
6	85	Pltfs' memorandum in opposition to the requirement of posting a bond, filed.

DATE	NR.	PROCEEDINGS
1981		
4/13/81	86	Pltf's motion to modify Feb. 12, 1981 order of the court, filed c/s
4/23/81	87	Letter to Judge Keeton from Mr. Katz, Esq, filed.
July 13	88	*KEETON, D.J.* ORDER dated April 21, 1981, entered. copies to counsel.
14	89	*KEETON, D.J.* Memorandum dated July 13, 1981, entered. cc/cl and opinion book
14	90	*KEETON, D.J.* Preliminary Injunction, dated July 13, 1981, entered. cc/cl and opinion book
July 28	91	Notice of appeal filed by the defts f.f. paid (cc/cl)
Aug. 12	92	Pltffs Notice of Appeal filed. c/s (F.F. not pd.)
17	93	Memorandum and Order received from the Court of Appeals entered . . . . Deft-appellants "Emergency Motion to Suspend, In Part, Injunction Pending Appeal" is denied. Pltffs-appellees motion to extend time for filing notice of appeal is denied.
25		CONFERENCE SET FOR 8/26/81, 3:15 PM; Messrs. Pressman, Whitlen, and Keenan of Honest Ballot Assn. notified by phone; attempted to leave message for Mr. Katz. Mr. Whitlen will participate by phone. (N.B.: Mr. Katz will participate by phone.)
26		*KEETON, D.J.* Conference; Order of 7/13/81 is hereby modified, such that notice will be mailed, in accord. with paragraph 4, by 9/9/81, and all other time limits are adjusted accordingly.

DATE	NR.	PROCEEDINGS
1981		
Aug. 26	94	P's mtn for an Award of Atty's Fees, Filed, c/s.
26	95	re #94 AFFADAVIT of Mark Stern, Filed, c/s.
26	96	re #94 AFFADAVIT of Kurt Pressman, Filed, c/s.
26	97	re #94 AFFADAVIT of Benjamin Hiller, Filed, c/s.
26	98	re #94 AFFADAVIT in support of an award of Atty's fees to Plaintiff, Filed, c/s.
26	99	re #94, MEMO in support of an Award of Atty's fees, Filed, c/s.
26	100	Mtn for an Order by P for def. to give an accounting of fees expended and to give individual def's & union equal shares, Filed, c/s.
31	101	Mandate received from the Court of Appeals entered . . . . motion to withdraw the appeal allowed.
Aug 21	102	Letter to KEETON, D.J. from Kathryn Noonan, dated 21 Aug 81 re: nomination meeting not yet arranged, Filed. cc's to Witlen, Stern, and Griffiths.
Sept 8	103	Def's opposition to P's mtn for an award of Attys fees and mtn to enlarge time to respond to P's mtns, Filed.
Sept 15	104	Letter from Plaintiff's Atty, Filed.
Sept 15	105	Letter re Opinion, Filed by plaintiff's attys.
Sept 14	106	*KEETON, D.J.*: Decision re Plaintiff's mtn for atty's fees, Motion DENIED reason being its untimeliness, ENTERED, cc/cl.

DATE	NR.	PROCEEDINGS
1981		
25	107	Copy of letter to Lawrence Katz, Esq., from Philip V. Piemontese of Local 82, dated 9/21/81, stating his belief that time guidelines for notice of election set in Order of 7/13/81, modified 8/26/81, not being complied with; filed, ref. to KEETON, D.J.
	108	Letter to KEETON, D.J., from Lawrence E. Katz, dated 9/24/81, requesting hearing or conf w/3rd parties and counsel, on validity of procedures followed to date in ref. to #107; filed, ref. to KEETON, D.J.
Oct 14	109	Letter to KEETON, D.J., from Gary S. Witlen, dated 10/9/81, ref. a letter of Mr. Pressman of 10/2/81 re eligibility period, putting forth Local's position; states Ds do not object to formal order approving 38-day notice of nomination; filed.
Oct 2	110	Copy to letter to Lawrence Katz from Philip V. Piemontese, dated 9/25/81, advising that the latter withdraws his objections dated 9/21/81 re scheduling of nomination meeting; filed.
Oct 9	11	Letter from Ms. Noonan to Mr. Katz dated 29 Sept. 81, Filed.
9	112	Letter from Mr. Pressman to Mr. Katz, Dated 2 October 81, Filed.
9	113	Letter from Mr. Katz to Judge Keeton, Filed.
Sept 9	114	Letter form Mr. Katz dated 9 Sept 1981, Filed.
10	115	P's mtn for expedited resolution of mtn for award of attys fees, Filed with MEMO in support, c/s.

DATE	NR.	PROCEEDINGS
1981		
Oct 9	116	Ps' mtn for approval of attachment of real estate of Ds B. Griffith and G. Harris, in amt of $60.000, filed, c/s.
	117	Affid of Kurt M. Pressman in support of #116, filed, c/s.
	118	Affid of Jerome Crowley in support of #116, filed, c/s.
21	119	*KEETON, D.J.* NOTICE OF HEARING ON #116, set for 11/20/81, 12:00 PM, filed, cc/cl.
		Clerk informed by Atty. Pressman that Ps do not contest approval of issues outlined on #109.
Oct 15	120	Letter from Mr. Katz to KEETON, D.J. dated 15 Oct 81, cc/cl.
21	121	Def's opposition to P's mtn for approval of attachment, Filed, c/s.
23	122	*KEETON, D.J.* MEMORANDUM AND ORDER ENTERED: Re request of Arbitrator for rulings: 1. 24-month period for computing membership in good standing, Oct., 1979 thru Sept., 1981, APPROVED;
		2. plan of examining eligibility of nominated candidates within 48 hrs of Nomin. Meeting APPROVED; post-meeting review shall not be based on period that includes Oct., 1981;
		3. Validity of 38 days notice APPROVED; . . . filed, cc/cl.
		Atty. Katz' office notified by phone, 10/23/81.

DATE	NR.	PROCEEDINGS
1981		
Oct 29	123	Letter from Mr. Katz to Ms. Noonan, & Mr. Pressman re Final selection of eligible candidates for election; a total of 15 candidates selected by Mr. Katz from possible 20 candidates, request for notice of challanges to candidates as soon as possible, Filed, cc/cl.
Nov 9	124	Letter to KEETON, D.J., from Lawrence E. Katz, even date, requesting ruling on eligibility of James Miller, w/attachments; filed, ref. to KEETON, D.J.
12	125	*KEETON, D.J.* MEMORANDUM AND ORDER ENTERED: ". . . ORDERED: The Arbitrator's decision that James Miller is eligible to run for Union office is AFFIRMED." Filed, cc/cl.
20		*KEETON, D.J.* HEARING ON #116: discussion of jurisdiction for issuing attachment for satisfaction of attys' fees; Court directs P's counsel to re-examine mtn; if wants to press mtn, will file memo re whether Court has authority to issue attachment for fees not now due and owing. P's memo due in 2 wks: Ds' reply 2 wks thereafter; P may request addit'l time to reply to Ds' submission. P may address issue of whether Ds are sued in individ or offical capacity.
Dec 7	126	Plaintiff's Memo of Law in Support of Mtn for Approval of Attachment, Filed, c/s.
Dec 18	127	Def's opposition to Plaintiff's Mtn for attachment, Filed, c/s.
30		Ref. to KEETON, D.J., #116 and related filings.
		(Clerk advised by Atty. Hiller that P will not reply to D's submission re #116.)

DATE	NR.	PROCEEDINGS
1981		
31	128	Ds' mtn for specific acctg of services rendered by Honest Ballot Assn and for extension of time to respond to arbitrators' request for payment, to 10 days after receipt of info moved for within; filed, c/s.
17	126A	Letter to KEETON, D.J., from Lawrence E. Katz, enclosing bill for services and statement of hours, requesting Court's determination of appropriateness, filed.
Nov 9	124A	Letter to Mr. Katz from Mr. Piemontese re procedure for mailing, Filed.
1982		
Jan 4	127	*KEETON, D.J.*: Memo & Order ENTERED: Plaintiff's motion for the Approval of Attachment is DENIED, cc/cl.
Jan 8	128A	Transcript of proceedings before KEETON, D.J. on 20 Nov 81, Filed.
14	129	Objection of Honest Ballot Assn to #128, and REQUEST FOR EXTENSION to respond to requests for payment of arbitrators, filed, c/s.
15		CONFERENCE ON #128, 129, SET FOR 1/25/82, 3:00 PM; counsel notified by phone; Mr. Witlen may participate by telephone.
25		*KEETON, D.J.* CONFERENCE ON #128: Assn. to make new submission of charges within 1 week; any submissions from P & D in reply due 2/10/82; FURTHER CONFERENCE SET FOR 2/19/82, 1:00 PM; NOT NECESSARY IF PARTIES COME TO AGREEMENT.

DATE	NR.	PROCEEDINGS
1982		
Feb 2	130	Honest Ballot Assn's supplement to statement of 12/16/81
Feb 12	131	Notice of address of Kathryn Noonan, to 27 School St., Filed
12	132	Def's second mtn for specific accounting of services rendered by Honest Ballot and extension of time to respon to request for payment by the "arbitrators" Filed, c/s.
19		*KEETON, D.J.* CONFERENCE on expenses of Honest Ballot Assn: recessed for counsel to confer on form of accounting; Atty. Noonan reports Atty. Keenan will file more specific accounting week of 2/22/82.
Feb 23	133	Transcript of proceedings before KEETON, D.J. on 25 Jan 82, Filed.
April 15	134	Defts' objections to the bills submitted by the "Arbitrators", filed c/s
19	135	Letter to KEETON, D.J., from Paul H.J. Keenan, dated 2/23/82 (rec'd previously in Chambers) attaching Details of Professional and Managerial Hours and Clerical Hours, filed.
	136	Letter to KEETON, D.J., from Lawrence E. Katz, dated 4/8/82 (rec'd previously in Chambers) stating his understanding as to disputed portions, and requesting approval of undisputed portion, filed.
Apr 19		*KEETON, D.J.* NOTICE OF HEARING ON OBJECTIONS TO REQUESTS FOR PAYMENT OF ARBITRATORS AND HONEST BALLOT ASSN., SET FOR 4/29/82, 3:00 PM; filed, cc/cl.

DATE	NR.	PROCEEDINGS
1982		
Apr 29	137	Notice of appearance of Donald J. Wood as Atty for the Honest Ballot Assoc, Filed.
May 7	138	Transcript of proceedings on 4/29/82 before J. Keeton, filed
May 13		Return on service wso Katherine Noonan, Filed.
May 20	139	Transcript of proceedings before KEETON, D.J. on 19 Feb 82, Filed.
21	140	Opinion received from the Court of Appeals entered . . . . affirmed.
May 24	141	Keenan's mtn for Allowance of atty's fees, Filed, c/s.
June 1		FURTHER HEARING SET FOR 6/2/82, 12:00 noon; preliminarily confirmed on 5/28/82; counsel re-confirmed by phone this date.
Apr 29		*KEETON, D.J.* HEARING ON OBJECTIONS TO REQUESTS FOR PAYMENT of (Re . . . . Arbitrators and Honest Ballot Assn (of New England). Evidence by Attys. Katz, Keenan; Atty. Katz excused for remainder of hearing.
June 2		*KEETON, D.J.* FURTHER HEARING ON OBJECTIONS TO REQUESTS FOR PAYMENT (Reptr. Linda MacDonald) Evidence re: Honest Ballot Assn. N.E. (Keenan) continues. Evidence closed. Honest Ballot Assn. N.E. agrees to accept $2400 as compensation plus $40 expenses; Local 82 agrees to pay $2440 to Assn. No compensation for Atty's fees for Mr. Keenan. Court finds that $4934.96 is reasonable compensation for services and expenses for

DATE	NR.	PROCEEDINGS
1982		
		Lawrence Katz. Local 82 ordered to pay this amt. Local 82 ordered to pay both H.B. Assn. of N.E. and L. Katz within 30 days.
Sept 1	142	*KEETON, D.J.* NOTICE OF CONFERENCE on renewed consideration of #94, Ps' mtn for attys' fees, ON 9/30/82, 4:00 PM; filed, cc/cl.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

GENERAL DOCKET

[Case Title Omitted in Printing]

DATE	FILINGS—PROCEEDINGS
1981	
July 30	Copy of Notice of Appeal and Docket Entries received and filed and Case docketed. Notices mailed. (laa).
Aug 5	Emergency Motion to Suspend in Part, Injunction Pending Appeal filed. Brief in Support of Defendants-Appellants' Application for Partial Stay filed. (laa).
Aug 6	Appearances of Mark Stern, Benjamin Hiller and Ken Pressman, Esquires for Plaintiffs, Appellees filed. (laa).
Aug 6	Appearance of Gary S. Witlen, Esq., for Defendants, Appellants received and filed. (laa).
Aug. 7	Appearance of Kathryn M. Noonan, Esq., for Defendants, Appellants received and filed. (laa). Appellants' Jurisdictional Statement filed. (laa).
Aug. 10	Plaintiffs-Appellees' Motion to Extend Time for Filing Notice of Appeal filed, Plaintiffs-Appellees' Opposition to Defendants-Appellants' Emergency Motion to Suspend in Part, Injunction Pending Appeal received and filed. (laa).
Aug. 12	Plaintiffs-Appellees' Memorandum in Opposition Defendants-Appellants' Application for Stay received and filed. (ar)
Aug. 17	Memo & Order (Bownes, J) denying appellants' "Emergency Motion to Suspend, In Part, Injunction Pending Appeal"; denying appellees' motion to extend time for filing notice of appeal, see Fed. R. App. P. 4(a)(5). Notices mailed. (jmv)

DATE	FILINGS—PROCEEDINGS
1981	
Aug. 21	Record on appeal in one volume, received & filed. Notices mailed. (mn)
Sept. 1	Defendants-Appellants' Designation of Appendix Entries and Issues received and filed. (laa).
Sept. 14	Plaintiffs-Appellees' Designation of Appendix Entries received and filed. (laa).
Sept. 25	Brief for the appellants and four volumes of the appendix, received and filed. Notices mailed. (mn)
Oct. 7	Motion filed. Order (Campbell, J.) enlarging time for Appellees to file thier brief up to and including October 30, 1981. Notices mailed. (laa).
Oct. 30	Brief for Plaintiffs, Appellees received and filed. (laa).
Nov. 10	Motion filed. Order (Coffin, Ch.J.) enlarging time for filing the reply brief for appellants to and including November 13, 1981. Notices mailed. [lam]
Nov. 13	Reply Brief for Defendants, Appellants received and filed. (laa).
Dec. 24	"Motion of the Secretary of Labor to Intervene" received and filed. (jd)
Dec. 28	Order (Bownes, J.) granting leave to Raymond J. Don van, Secretary of Labor, to intervene herein; and said intervenor is granted 10 minutes for oral argument. Notices mailed. (mn) Brief for the intervenor, received and filed, appearance of Susan M. Webman, for Intervenor, received and filed. (mn)
Dec. 29	Assigned for hearing at the January, 1982, session. (cb)

DATE	FILINGS—PROCEEDINGS
1981	
Dec. 30	"Plaintiffs' Opposition to Motion of Secretary of Labor to Intervene" filed.
Dec. 30	Order (Bownes, J.) treating opposition of appellees as a motion for reconsideration and denying the same; and counsel may request leave at the end of oral argument to file a short memorandum in response to the amicus if they feel such memorandum is needed. Notices mailed. [lam]
1982	
Jan. 6	Heard by Coffin, Campbell & Bownes, J.J. [lam]
Jan. 12	Appearance of Susan Webman for the intervenor filed. (jd)
Jan. 15	Motion filed. Order (Breyer, J.) granting leave to plaintiffs, appellees to file a brief in response to the arguments presented in the Secretary of Labor's brief, instanter. Notices mailed. (mn) Plaintiffs/appellees' brief in response, received and filed. (mn)
May 21	Judgment: The order of the District Court is affirmed. Opinion of the Court by Bownes, J., dissenting opinion by Campbell, J. Notices mailed. [lam]
May 27	Itemized and verified bill of costs received and filed. Notices mailed. (cb)
June 1	Defendants-appellants' objection to plaintiffs-appellees' bill of costs received and filed. (lam)
June 3	Order (Bownes, J.) Upon consideration of appellants' objection to appellees' bill of costs it is ordered as follows: Costs in favor of the plaintiffs/appellees and against appellants are taxed at $148.20; and Costs in favor of plaintiffs/appellees and against The Secretary of Labor are taxed at $217.35. Notices mailed. (mn)

DATE	FILINGS—PROCEEDINGS
1982	
June 4	Motion filed. Order (Coffin, Ch.J.) enlarging the time for appellant to file a Petition for Rehearing and A Suggestion for Rehearing en Banc to and including June 7, 1982. Notices mailed. (mn)
June 4	Petition for rehearing and rehearing en banc (filed at 8:15 p.m.) received and filed. (mn)
June 10	The Secretary of Labor's Objection to Plaintiffs-Appellees' bill of costs, filed. (as)
June 11	Order (Bownes, J) Upon consideration of the Secretary's objection to plaintiffs/appellees' bill of costs, dated June 9, 1982; It is ordered that said objection is hereby overruled for reasons stated in said order. Notices mailed. (mn)
June 15	ORDER: (Coffin, Ch.J., Campbell, Bownes & Breyer, JJ.) the petition for rehearing and the suggestion for rehearing en banc filed on June 4, 1982, are hereby denied. Notices mailed. (mn)
June 22	Mandate issued, copy filed, original papers to follow. Notices mailed. (as)
Sept. 20	Notice of filing petition for certiorari [#82-432], filed. (mn)
1983	
Jan. 26	Notice from the Supreme Court granting certiorari, [82-432/1/24/83], received and filed. (mn)

IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1982

No. 82-432

LOCAL NO. 82, FURNITURE AND PIANO MOVING, FURNITURE STORE DRIVERS, HELPERS, WAREHOUSEMEN, AND PACKERS; BART GRIFFITHS, SECRETARY-TREASURER, LOCAL NO. 82; GEORGE HARRIS, PRESIDENT, LOCAL 82; PHILLIP PIEMONTESE, CHAIRMAN OF THE ELECTION COMMITTEE OF LOCAL NO. 82; and JOHN DOE, JAMES DOE and JEROME DOE, MEMBERS OF THE ELECTION COMMITTEE OF LOCAL NO. 82,
Petitioners,

RAYMOND DONOVAN, SECRETARY OF LABOR,
Intervenor,

v.

JEROME CROWLEY, ANTHONY COYNE, JOSEPH FAHEY, ROBERT LUNNIN, JAMES HAYES, GERALD OWENS, JOHN LYNCH, JOSEPH TRASK, JOSEPH MONTAGNA, and DENNIS BATES,
Respondents.

OPINIONS BELOW

The opinion of the District Court for the District of Massachusetts is reported at 521 F. Supp. 614, and is reprinted in Appendix A of the Petition for Writ of Certiorari filed September 13, 1982. The opinion of the United States Court of Appeals for the First Circuit is reported at 679 F.2d 978, and is reprinted in Appendix B of the Petition. The Judgment of the Court of Appeals is printed in Appendix C of the Petition and that Court's Order Denying Request for Rehearing is printed in Appendix D of the Petition.

The District Court's Temporary Restraining Order Issued December 12, 1980, is printed in Appendix F of the Petition.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

[Case Title Omitted in Printing]

COMPLAINT

1. This is an action brought under Article 29 U.S.C. s. 411 *et seq.* by union members, severally and on behalf of two (2) classes of union members, against their union officers, who have violated and continue to violate Plaintiffs' equal rights to attend union meetings, nominate candidates for election, and freely express their opinions.

2. The Plaintiffs seek preliminary relief requiring the reopening of nominations for their upcoming union election, declaratory relief, and damages.

JURISDICTION

3. Jurisdiction of this Court is claimed under 29 U.S.C. 412 and 28 U.S.C. 1331 and 1337.

PARTIES

Individual Plaintiffs

4. The Plaintiffs Jerome Crowley, Anthony Coyne, Joseph Fahey, James Hayes, Robert Lunnin, John Lynch, Gerald Owens, Joseph Trask and Joseph Montana are members of Teamster Local No. 82, Furniture and Piano Moving, Furniture Store Drivers, Helpers, Warehousemen, and Packers, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter referred to as Local 82). They are all citizens of Massachusetts and of the United States.

5. All of the Plaintiffs are employees of one of approximately 14 companies in the Boston area which have negotiated collective bargaining agreements with Local 82.

6. Plaintiffs Lunnin, Hayes and Trask are "spares"—i.e., they work as needed by one or more employers and are not assured full-time or steady employment. Approximately one-third of the members of Local 82 are spares. The other Plaintiffs are "regulars": i.e., they have permanent, full-time positions with their respective employers.

7. All the Plaintiffs seek to nominate a candidate and/or be nominated as a candidate in the impending election of officers of Local 82.

Class Plaintiffs

8. All the Plaintiffs are so situated as to be representative of all members of their union local in good standing. The Plaintiffs Lunnin, Hayes and Trask are also so situated as to be representative of all the members in good standing of their union who are employed as "spares."

9. The Plaintiffs' interests are such that they will fairly and adequately protect the interests of all such members, and claims are typical of the claims of all such members, and the classes of all such members are so numerous that joinder of all such members is impractical.

10. Plaintiffs seek to raise by their claims herein questions of law and fact common to all such members, which common questions of law and fact predominate over any questions affecting only the individual Plaintiffs; hence a class action is superior to other available methods for the fair and efficient adjudication of the claims raised herein.

Defendants

11. Defendant Local 82 is a labor organization whose principal office is in Quincy, Massachusetts.

12. Bart Griffith is the Secretary-Treasurer of Local 82. Defendant George Harris is the President of Local 82. Phillip Piemontese is the Chairman of the Election

Committee of Local 82, and John Doe, James Doe and Jerome Doe are the members of said Election Committee. The Defendants are individually and collectively responsible for the conducting of meetings and elections of officers within Local 82. They are residents of the Commonwealth of Massachusetts and the United States.

FACTS

13. Defendant Local 82 has a membership of approximately seven hundred and fifty (750) persons. Its operations at all relevant times have been governed by the Constitution of the International Union (hereinafter referred to as "the Constitution") and the "Constitution and Bylaws" of Local 82 (hereinafter referred to as "the Bylaws"), true and accurate copies of relevant portions of which are appended as Exhibits A and B hereto.

14. The Defendant Union and its International have for many years been run in a fashion that restricted, discouraged and suppressed democratic participation by their individual members, and democratic opposition to incumbent union officers in elections and dissent within the local.

When, in the past, Defendants or the International have engaged in actions to suppress democracy and/or dissent in the union, there has followed as a direct result of said actions fear and/or discouragement among the membership of further engaging in democratic activity and/or dissent in the union. In particular there has arisen the fear that the officers and/or Executive Board will take away from members engaging in such activities their ability to continue to earn a livelihood, which ability is dependant on their membership-in-good-standing in the union.

15. The Plaintiffs are all members in good standing of Local 82. None of them are officers of said union.

16. The Plaintiffs and other members of Local 82 have in recent years individually sought to encourage union members to attend meetings of Local 82, express their views therein, and to participate more actively in the deliberations and voting upon business in the union. They have themselves regularly attended union meetings for these purposes and attempted to fully and actively participate in the business affairs of the union at these meetings.

17. At said meetings and on other occasions Plaintiffs have actively expressed their views, opinions and criticisms regarding the business, management and leadership of the Local 82 and its officers. In 1979 and 1980 the Plaintiffs openly criticized the incumbent officers:

(a) for failing and refusing to provide new members with the Constitution and Bylaws of the union and failing to make them available to other members;

(b) for unlawfully raising dues on one occasion without even attempting to obtain membership approval thereof;

(c) for attempting to raise dues on another occasion to pay for the creation of a patronage position in the union;

(d) for calling an unnecessary strike against an employer; and

(e) for failing to provide members with accurate and complete information, in particular information about the loss of benefits thereunder to "spares," about a contract presented to them for ratification.

18. The aforementioned conduct of Plaintiffs and other members of Local 82 has continued to November, 1980. At all relevant times the Defendants have been aware of and opposed to the Plaintiffs' aforementioned activities.

19. On or about November 9, 1980, the officers of Local 82 held a membership meeting, one of the purposes of which was to nominate candidates for the union's De-

cember election of its Executive Board members, who consist of President, Vice-President, Secretary-Treasurer, Recording Secretary, and three Trustees.

20. For several months prior to this nominating meeting, the Plaintiffs and their supporters had planned to attend said meeting and nominate a slate of candidates to oppose the incumbent officers who are seeking re-election.

21. In violation of Article VI, Sec. 2 of the Bylaws, Exhibit B hereto, the Defendants failed to give notice by mail or by publication in a local union publication mailed to all members, as required by the Bylaws, at least twenty (20) days prior to the date of the nominating meeting of its specific date, time and place and of the offices to be filled. Indeed the Defendants failed to give most members and even most stewards any reasonable advance notice whatsoever of the nominating meeting. Only at a few of the union members' workplaces was any notice of said meeting posted, and it was posted at those few places only four to six (4-6) days prior to the meeting, thereby giving most spares no effective notice at all.

22. As a result of the lack of notice, the nominations meeting was sparsely known of and/or sparsely attended, some of the Plaintiffs and other union members in good standing were thereby unable to attend said meeting and nominate eligible candidates of their own choosing for office, and others were denied their right to nominate them for union office, all of which the Plaintiffs or others desired to do and otherwise would have done.

23. Some Plaintiffs and other union members were discouraged from attending said meeting because Defendants falsely led them to believe they could not nominate or vote for officers, or be nominated for office unless they had attended fifty per cent (50%) of all prior union meetings within the last 24 months, as is stated in the Constitution, Exhibit A, Art. II, s. 4, and the Bylaws, Art. VI, s. 3(b).

24. Prior to the November 9, 1980 union meeting, the expressed policy and practice of the union regarding admittance into union meetings was either that every member had to show his dues receipt indicating payment of dues for that month; or that the member must pay his union dues at the door of the meeting. More often in practice members were admitted to meetings without either showing dues receipts or paying at the door. As recently as the October, 1980 union meeting, a number of members, including Plaintiff Lunnin, were permitted to attend the meeting after payment of their dues at the door.

25. At the November 9, 1980 meeting, Plaintiff Jerome Crowley and eleven other supporters of the Plaintiffs were refused admittance to the meeting by the Defendants, purportedly because they did not have their October, 1980 dues receipts. The Defendants refused to allow any of the twelve to pay their dues at the door. The defendants refused to permit Plaintiff Crowley to enter the meeting even though Defendants Griffith and Harris had computer print-out sheets in their possession at the time showing that Crowley was fully paid up in his dues.

26. Had Plaintiff Crowley and/or the others been allowed into the meeting, they would have nominated several of the Plaintiffs or their fellow dissidents to union office.

27. The failure of the union to abide by its past practice discriminated in particular against spares who are not and cannot be on checkoff, must pay their dues independently, and had in the past relied upon the practice of paying their dues at the door to gain entrance to union meetings.

28. At the opening of the November 9, 1980 meeting, Defendant Griffith read a list of approximately eight members, including Plaintiffs Lunnin, Hayes and Coyne, who were ineligible to be candidates for office due to their

failure to comply strictly with the union's twenty-four (24) month rule. Said rule which is stated in the Constitution, Art. II, s. 4, and Bylaws, Art. IV, s. 3(b), Exhibits A and B hereto, bars members who have not paid their dues in full and on time in every month of the twenty-four (24) months preceding an election from running for elective office.

29. It was known by the Defendants to be unlawful to apply said rule without reasonable granting of grace periods; nonetheless they applied it strictly to the Plaintiffs and others desiring to run against them for union office. At least several hundred other members of the union were automatically disqualified from running for office against the incumbents by the strict application of this rule, yet only eight persons' names were read off at the meeting. Each of these eight persons were members who regularly attended meetings and have consistently opposed the incument union leadership. One of said persons, the Plantiff Coyne, was disqualified under this rule in spite of the fact that he had only paid his dues late once in the preceding 24 months and on that occasion was only five (5) days late in making his payment. This fact was known to the Defendants at the time they disqualified him because, as described in paragraph 24 heretofore, they had a printout of his dues payments in their possession at the time. A true and accurate copy of said printout is appended hereto as Exhibit C.

30. In the past union election in 1977, when there was no organized opposition to the Defendants, the 24 month rule was not strictly enforced as a prerequisite for eligibility to run for office; hence one candidate in said election was permitted to run for office in spite of the fact that he had an imperfect record of timely dues payment for the preceding 24 month time period.

31. Plaintiffs Crowley, Lunnin, Owens, Coyne and Hayes would have run for union office against the incumbent Defendant officers if they had not been locked out of

the union meeting and/or declared ineligible for their failure to comply with the 24 month rule.

32. After reading off the list of eight (8) ineligible members, Defendant Griffiths read off a list of only twelve (12) members who he said were eligible to run for union office. Of these twelve, seven (7) were incumbent officers, four (4) were their close supporters, and one (1) was Plaintiff John Lynch. Though many more than twelve (12) members were eligible for office, Defendant Griffiths read off a list of only twelve (12) eligible candidates and thereby falsely led Plaintiffs and other union members in attendance at the meeting to believe that they could not nominate other eligible candidates of their choosing.

33. When the floor was opened for nominations at the November 9, 1980 meeting, Plaintiff Robert Lunnin announced his nomination of Plaintiff John Lynch, the only named eligible candidate who was not an incumbent or one of their close supporters, to the office of Secretary-Treasurer, the most important office in the union. The Recording Secretary recorded Lynch instead as having been nominated for President. When, later during the nominations, this action was made known, Plantiff Lunnin requested that the error be rectified. Defendant Bart Griffith, incumbent Secretary-Treasurer, rejected this request, replying, "I'm running unopposed."

34. During the meeting, Plaintiff Lynch nominated Plaintiff Gerald Owens for office in the union. Although this nomination was accepted at the time, Plaintiff Owens was declared ineligible two days later due to his noncompliance with the "twenty-four (24) month rule." One of the incumbents' selections for union office was also later determined to be ineligible under this rule. The incumbents substituted on the ballot later prepared the name of another person they wanted to run for that office, without notice to the members. No comparable opportunity was granted to Plaintiffs or other members of the union with

regard to the nomination and disqualification of Gerald Owens. Hence at the present time the incumbent officers and their close supporters are running without opposition, except for the office of President, for which John Lynch is also listed as a candidate on the ballot.

35. The Defendants aforementioned actions and in particular their enforcement of the "twenty-four month rule" in the current election was in response to the rise of opposition within the union and was intended to prevent other union members, and in particular members of the opposition group, from being nominated for union office.

36. On or about November 10, 1980, Plaintiffs Crowley, Lynch, Lunnin, Owens and Hayes sent a letter to the Defendant Griffiths, the Executive Board of Local 82, Joint Council 10 of the International Union, of which Local 82 is a member, and the General President of the International Union appealing and challenging the nominating process and the application of the "twenty-four month rule." Said letters were sent pursuant to the procedures described in Article XXII, s. 5 of the Constitution, Exhibit A hereto.

37. Immediately after delivery of the aforementioned notice/letter of appeal to the Local Union's offices, the Defendant Griffiths charged the Plaintiff Robert Lunnin with several violations of his obligations as a member of the Defendant Union solely on account of and in reprisal for his lawful protestations against the aforementioned actions of the Defendants of November 9, 1980. A copy of the charges are appended hereto as Exhibit D.

38. On or about November 25, 1980 a trial was held on the aforementioned charges before four members of the Executive Board of Local 82. If the Plaintiff Lunnin is found guilty of the charges, he may lose his good-standing membership in Local 82 and thereby lose his ability to earn his livelihood.

39. The aforementioned discipline of the Plaintiff Lunnin was conducted in violation of his rights and the rules of the union in that: (a) he was not served with specific written charges; and (b) not afforded a hearing before disinterested persons appointed as substitutes for the charging party members of the Executive Board as is required by Article XIII of the Bylaws, Exhibit B hereto.

40. The Plaintiffs have to date received no response from the Defendants on their objections to the nomination processes in their union and no determination regarding the hearing held on charges brought against the Plaintiff Lunnin.

41. The Local 82 elections are scheduled to be held on or about December 13, 1980. If said elections are held without an opportunity being afforded to reopen nominations in accordance with applicable law and the Constitution and Bylaws of Local 82 and if said elections are held while false and frivolous charges are pending against the plaintiff Lunnin, which charges threaten his membership-in-good standing in the union and ability to earn his livelihood, the holding of said elections and the consequent election of unopposed officers as a result thereof will serve to chill and suppress any future exercise of rights guaranteed to them by Plaintiffs and other members of Local 82.

42. The Plaintiffs have no adequate remedy other than this action. Any further attempt to exhaust administrative remedies would be futile because the exhaustion of said remedies in the local union would be before judges who are not disinterested and because the exhaustion of said remedies in the International Union against incumbent officers of local unions has been historically proved to be of no avail.

CLAIMS

43. Defendants' failure to send all members written notice of the nominating meeting twenty days in advance, as required by Article VI, s. 2 of the Bylaws and

their posting of such notice in only some workplaces and then only 4 to 6 days before the meeting denied Plaintiffs and the Plaintiff classes (1) the equal right to attend said meeting, and (2) the equal right to nominate candidates, each in violation of 29 U.S.C. s. 411(A)(1).

44. Defendants' refusal to permit Plaintiff Crowley and eleven others to attend the November 9 membership meeting denied them their equal rights to attend membership meetings, in violation of 29 U.S.C. s. 411(a)(1).

45. Defendants' refusal to permit Plaintiff Crowley and eleven others to attend the November 9 membership meeting was in reprisal for Plaintiff Crowley and others expressing differing views than those held by the Defendants regarding union business and constituted an attempt to deny them their right to freely express their views about the upcoming election and other matters affecting the membership in violation of 29 U.S.C. s. 411 (a)(2).

46. Defendants' unlawful refusal to permit Plaintiff Crowley and eleven others to attend the November 9 nominations meeting resulted in their being denied their equal right to nominate candidates for office, a right they intended to exercise fully, in violation of 29 U.S.C. s. 411 (a)(1).

47. The Defendants' announcement of the names of only twelve members eligible for office, all but one of whom were either incumbent officers or their close supporters, constituted a denial of the equal right of the Plaintiffs to nominate candidates of their choice to union office, in violation of 29 U.S.C. s. 411(a)(1).

48. Defendants' refusal to allow Plaintiff Robert Lunnin to nominate Plaintiff John Lynch to the position of Secretary-Treasurer constituted a denial of Plaintiff Lunnin's equal right to nominate eligible candidates in violation of 29 U.S.C. s. 411(a)(1).

49 The Defendants' strict application of the "twenty-four month" rule denied Plaintiffs their equal right to

nominate candidates and constituted an unreasonable and discriminatory restriction on nominations and eligibility for union candidacy, in violation of 29 U.S.C. s. 481(e).

50. The Defendants' strict application of the "twenty-four month rule" constituted an unlawful retaliation for Plaintiffs' expression of their views within the union, in violation of 29 U.S.C. s. 411 (a) (2).

51. The Defendants' discipline of the Plaintiff Lunnin constitutes unlawful reprisal against said Plaintiff for his exercise of rights guaranteed by 29 U.S.C. s. 411(a) (2).

52. The Defendants' discipline of the Plaintiff Lunnin constitutes unlawful discipline in violation of 29 U.S.C. s. 411(a) (5).

PRAYERS FOR RELIEF

WHEREFORE PLAINTIFFS PRAY THIS HONORABLE COURT:

1. Issue a short order of notice for the Defendants to appear and show cause why Plaintiffs' Motion for a Preliminary Injunction should not be allowed.

2. Grant Plaintiffs' Motion for a Preliminary Injunction.

3. Declare the aforementioned conduct of the Defendants to be unlawful and in violation of the specific, aforementioned laws.

4 Issue a permanent injunction in accordance with the terms of Plaintiffs' Motion for a Preliminary Injunction or such revised terms as proposed at a later date to the Court.

5. Award the Plaintiffs damages in amount of $15,000.00.

6. Award the Plaintiffs costs including reasonable attorneys fee.

7. Order such other relief as justice requires.

By their counsel,

/s/ Kurt Pressman

/s/ Mark Stern

/s/ Benjamin Hiller

KURT PRESSMAN
MARK STERN
BENJAMIN HILLER
GOLDSTEIN, PRESSMAN AND STERN
678 Massachusetts Avenue
3rd floor
Cambridge, Mass. 02139
617-492-2211

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

[Case Title Omitted in Printing]

MOTION FOR PRELIMINARY INJUNCTION

Now come the Plaintiffs in the above entitled action and move that this Honorable Court make the following findings, declarations and orders of preliminary injunctive relief:

1. The Court finds that the Plaintiffs have a likelihood of prevailing on the merits of their claims that:

(a) Defendants' failure to send all members written notice of the nominating meeting twenty days in advance, as required by Article VI, s. 2 of the Bylaws and their posting of such notice in only some workplaces and then only 4 to 6 days before the meeting denied Plaintiffs and the Plaintiff classes (1) the equal right to attend said meeting, and (2) the equal right to nominate candidates, each in violation of 29 U.S.C. s. 411 (A) (1).

(b) Defendants' refusal to permit Plaintiff Crowley and eleven others to attend the November 9 membership meeting denied them their equal right to attend membership meetings, in violation of 29 U.S.C. s. 411 (a) (1).

(c) Defendants' refusal to permit Plaintiff Crowley and eleven others to attend the November 9 membership meeting was in reprisal for Plaintiff Crowley and others expressing differing views than those held by the Defendants regarding union business and constituted an attempt to deny them their right to freely express their views about the upcoming election and other matters affecting the membership in violation of 29 U.S.C. s. 411 (a) (2).

(d) Defendants' unlawful refusal to permit Plaintiff Crowley and eleven others to attend the November 9 nominations meeting resulted in their being denied their equal right to nominate candidates for office, a right they intended to exercise fully, in violation of 29 U.S.C. s. 411 (a) (1).

(e) The Defendants' announcement of the names of only twelve members eligible for office, all but one of whom were either incumbent officers or their close supporters, constituted a denial of the equal right of the Plaintiffs to nominate candidates of their choice to union office, in violation of 29 U.S.C. s 411 (a) (1).

(f) Defendants' refusal to allow Plaintiff Robert Lunnin to nominate Plaintiff John Lynch to the position of Secretary-Treasurer constituted a denial of Plaintiff Lunnin's equal right to nominate eligible candidates in violation of 29 U.S.C. s. 411 (a) (1).

(g) The Defendants' strict application of the "twenty-four month" rule denied Plaintiffs their equal right to nominate candidates and constituted an unreasonable and discriminatory restriction on nominations and eligibility for union candidacy, in violation of 29 U.S.C. s. 481 (e).

(h) The Defendants' strict application of the "twenty-four month rule" constituted an unlawful retaliation for Plaintiffs' expression of their views within the union, in violation of 29 U.S.C. s. 411 (a) (2).

(i) The Defendants' discipline of the Plaintiff Lunnin constitutes unlawful reprisal against said Plaintiff for his exercise of rights guaranteed by 29 U.S.C. s. 411 (a) (2).

(j) The Defendants' discipline of the Plaintiff Lunnin constitutes unlawful discipline in violation of 29 U.S.C. s. 411 (a) (5).

2. The Court further finds that the Plaintiffs will suffer immediate and irreparable harm unless said violations are redressed as ordered below.

3. Wherefore the Court orders that the declaration of the election of unopposed nominees for office in Local 82 and the swearing in of said officers are null and void.

4. And the Court further orders the Defendants to collect, but refrain from opening or examining any mail-in ballots received from members of Local 82; and to destroy said ballots and otherwise cease and desist from conducting the election of officers in Local 82 except in a manner consistent with all the provisions of this order.

5. And the Court further orders the Defendants to reopen nominations for officers in Local 82 and schedule and hold a membership meeting in December, 1980 for the purpose of nominating candidates for said offices.

6. And the Court further orders the Defendants to give notice to all its members of the holding of a meeting for nominating candidates for office in Local 82 in accordance with applicable law, and the requirements of the Constitution and Bylaws of the Union.

7. And the Court further orders the Defendants to include in the notice of said meeting for nominating candidates for office the following statements:

(a) No member of the union in good standing shall be disqualified from attending said meeting, nominating members in good standing of their selection, voicing their opinions and/or running for union office on account of the fact that they are employed as spares;

(b) No member of the union in good standing shall be disqualified from attending said meeting, nominating members in good standing of their selection, voicing their opinions and/or running for union office on account of the fact that they have failed to attend

50% of the membership meetings of the local union during the past 24 months time;

(c) No member of the union in good standing shall be disqualified from attending said meeting, nominating members in good standing of their selection, voicing their opinions and/or running for union office on account of the fact that they have failed to pay their dues in the month due for each of the past 24 months time unless they have so failed to pay their dues in a timely fashion for an aggregate total of 8 instances or 8 months during said period of time; and

(d) No member of the union in good standing shall be disqualified from attending said meeting, nominating members in good standing of their selection, voicing their opinions and/or running for union office on account of the fact that they have failed to bring evidence with them that they have paid their dues in full to the current month; and any member who desires to bring his/her dues up to date by making payment at the door of the meeting shall be permitted to enter and exercise their rights at such meeting.

8. And the Court further orders the Defendants to conduct the meeting for nominating candidates for union office in accordance with the provisions of the notice set forth in 7 (a), (b), (c) and (d) above.

9. And the Court further orders the Defendants to refrain from any further prosecution of pending charges against Robert Lunnin and to cease and desist from imposing any discipline on Robert Lunnin or any other member of Local 82 except after providing said member with written specific charges and conducting a hearing in accordance with its Constittuion and Bylaws before an impartial body.

10. And the Court orders the Defendants to cease and desist from any and all actions which discriminate or retaliate against the members of Local 82 on account of

their having exercised their rights to (a) express their views about the upcoming election of union officers and other matters of concern to union members; (b) nominate candidates for union office or support such nominees' election to union office; and/or (c) run for office in said union.

By their counsel,

/s/ Kurt Pressman

/s/ Mark Stern

/s/ Benjamin Hiller

KURT PRESSMAN
MARK STERN
BENJAMIN HILLER
GOLDSTEIN, PRESSMAN AND STERN
678 Massachusetts Avenue
3rd floor
Cambridge, Mass. 02139
617-492-2211

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

[Case Title Omitted In Printing]

MEMORANDUM

December 12, 1980

This case arises out of a dispute concerning a meeting of the membership of Local No. 82 ("Local 82") on November 9, 1980, at which the nomination of candidates for the Local's Executive Board was conducted. The Local's election is to be completed December 13, 1980. Plaintiffs, nine members of Local 82, have brought this action on behalf of themselves and two classes of Local members against the Local, two of its current officers, and the chairman and members of its Election Committee, alleging that the defendants violated Title I of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 411 *et seq.* ("LMRDA" or "the Act"), by, *inter alia*, denying plaintiffs their rights to attend union meetings and nominate candidates on an equal basis with other Local members, and to speak freely on matters relating to union business without reprisal. This matter is before the court on plaintiffs' Modified Motion for a Preliminary Injunction reopening the nominations for the Executive Board, preventing defendants from declaring winners of the election, and revoking disciplinary penalties imposed on one of the plaintiffs. Defendants argued that because the conduct at issue bears upon the procedures for conducting union elections, plaintiffs' exclusive remedy is to file a complaint with the Secretary of Labor under Title IV of the LMRDA, and that section 403 of the Act, 29 U.S.C. § 483, and the Supreme Court's decision in *Calhoon* v. *Harvey*, 379 U.S. 134 (1964), denies this court jurisdiction over this action.

I.

FACTS

For the purposes of determining whether this court has jurisdiction and authority to grant temporary relief, we examine the complaint, memorandum, proposed findings, and affidavits filed by the plaintiff to determine whether they establish a prima facie violation of Title I of the Act. *See McNail* v. *Amalgamated Meat Cutters*, 549 F.2d 538, 540 (8th Cir. 1977).

In essence, plaintiffs' materials, if uncontroverted by the defendants, would establish the following:

Plaintiffs are members in good standing of Local 82 who have been openly critical of its incumbent officers and have encouraged other members to attend meetings of the Local and participate actively in union meetings of the Local and participate actively in union affairs. Each of the plaintiffs seek to nominate and/or to serve as a member of the Executive Board of Local 82. On November 9, 1980, Local 82 held a membership meeting to nominate candidates to run in the Local's December election of the Executive Board, *i.e.*, its President, Vice-President, Secretary-Treasurer, Recording Secretary, and three Trustees. Although required to do so by article VI, section 2 of its Bylaws, defendants failed to give Local 82 members 20 days notice of the meeting by mail or publication in a widely-circulated local union publication. Defendants failed to give many Local members any notice of the meeting. They posted notices only at a few of the Local members' workplace less than one week before the meeting. No notice was posted at several workplaces at which a substantial number of Local members worked. As a result of the defendants' failure to give adequate notice, many Local members did not know of the meeting and were therefore unable to attend.

Before the November 9, 1980 meeting, the practice at Local 82 had been to admit to Local meetings all members

who had either a receipt indicating payment of union dues for that month or who paid at the door of the meeting. Often, in practice, Local members were admitted to meetings without showing either dues receipts or paying at the door. On November 9, 1980, plaintiff Jerome Crowley and other Local members attempted to attend the nominations meeting but were denied entrance by one of the defendants because they did not have a dues receipt. At that time, defendants had in their possession a computer printout showing Crowley was current in his dues. (Crowley was later allowed into the meeting after nominations had closed.) Crowley intended to run for Local office and nominate others for Local officers. Plaintiffs allege that the defendants' failure to allow Crowley and the others to attend the nominating meeting was part of a pattern of conduct aimed at suppressing dissident views in the Local.

At the meeting, the defendants declared that Local members who had not paid their dues in full and on time in every month of the preceding twenty-four months were ineligible for office. Article VI, section 3(b) of the Local's Bylaws allow only members who have paid their dues on time for twenty-four consecutive months to run for elective office. Although several hundred Local 82 members were disqualified by the rule, defendants read only a list of eight members declared ineligible. Each of the eight had been outspokenly critical of the incumbents; three of them are named plaintiffs in this action. One of the defendants then read a list of 12 members deemed eligible for Local office. Of the twelve, only one, plaintiff John Lynch, was not an incumbent officer or one of their close supporters. Although others, including one of the plaintiffs, were eligible for Local office under the twenty-four month rule, no other names were listed. The plaintiffs allege that defendants refrained from doing so in order to lead those attending the meeting to believe that only those listed were eligible.

Later at the meeting, plaintiff Lunnen nominated plaintiff John Lynch for Secretary-Treasurer, the most important office in the Local. The Recording Secretary recorded Lynch as having been nominated for Local President. When this action was made known, Lunnen requested that the error be rectified. Defendant Griffith, incumbent Secretary-Treasurer refused, replying, "I'm running unopposed."

Plaintiffs' materials raise several other claims. They allege that defendants denied them the opportunity, after the nominating meeting, to substitute eligible candidates for candidates ruled ineligible under the 24 month rule, an opportunity afforded to supporters of the incumbents. In addition, plaintiff Robert Lunnen alleges that because of his outspoken criticism of the incumbents, and his filing of a notice of appeal to the Executive Board of the Local challenging the nominating procedures used at the November 9, 1980 meeting, he was charged with misconduct by one of the defendants. A trial was held at which three of the four Executive Board members presiding were later charged as defendants in this action. Lunnen never received specific notice of the nature of the misconduct at issue. After a closed hearing, Lunnen was given what plaintiffs described as an unusually severe penalty, a $150.00 fine and a two year suspension from union meetings. Plaintiffs allege that the harsh penalty was actually imposed for Lunnen's exercise of his right to criticize the unions.

II.

JURISDICTION

Defendants argue that because this action arises out of a dispute concerning a union election, plaintiffs' exclusive remedy is to file a complaint with the Secretary of Labor for relief under Title IV of the LMRDA, 29 U.S.C. § 481 *et seq.* They contend that section 403 of the Act, 29 U.S.C. § 483, prevents this court from taking jurisdiction over

any suit under Title I of the Act raising claims that might also be characterized as Title IV claims.

Section 101 of the Act, 29 U.S.C. § 411, establishes a Bill of Rights for union members. Section 101(a)(1) grants

> [e]very member of a labor organization . . . equal rights and privileges . . . to nominate candidates, to vote in elections or referendums . . . , to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

29 U.S.C. § 411(a)(1). Similarly, section 101(a)(2) grants every union member

> the right to meet and assemble freely with other members; to express any views . . . , and to express at meetings . . . his views upon candidates in an election . . . or upon any business properly before the meeting, subject to the organization's established and measureable rules pertaining to the conduct of meetings . . . .

29 U.S.C. § 411(a)(2). Section 101(a)(5) of the Act grants each member procedural safeguards against improper disciplinary action.

In *Calhoon* v. *Harvey*, *supra*, the plaintiffs challenged a seamen's union rule that a member could be eligible for nomination or election only if he had been a member for five years and had served 180 days or more of seatime in each of the two preceding years aboard qualified vessels. The Supreme Court affirmed the district court's dismissal of the suit for want of jurisdiction, holding that the plaintiffs had failed to state a claim under section 101(a)(1), and that plaintiffs could not rely on a Title IV violation to establish jurisdiction under section 102 of the LMRDA, 29 U.S.C. § 412. The Court held that

section 101(a)(1) "is no more than a command that members and classes of members shall not be discriminated against in their right to nominate and vote." 379 U.S. at 139.

Calhoon does not control the instant case. There the plaintiffs had not argued that the union's eligibility rule had been applied in a discriminatory fashion. The Court stated:

> It is true [the plaintiffs] were denied their request to be candidates, but that denial was not a discrimination against their right to nominate, *since the qualifications were required equally of all members.*

Id. at 139 (emphasis supplied).

In the instant case, plaintiffs have alleged that defendants enforced the rule on dues receipts in a discriminatory manner, with the intent to exclude dissidents from the nominating process. Although the union nominating process is regulated by Title IV of the LMRDA, several Courts of Appeal have upheld granting relief where "a union member has been discriminated against in the exercise of his Title I rights." *Kupau* v. *Yamamoto*, 622 F.2d 449, 455 (9th Cir. 1980). *Accord Depew* v. *Edmiston*, 386 F.2d 710 (3d Cir. 1967); *Schonfeld* v. *Penza*, 477 F.2d 899 (2d Cir. 1973); *McNail* v. *Amalgamated Meat Cutters*, *supra*, 549 F.2d at 540. In particular, such relief is appropriate where the discrimination operates to exclude those who most vigorously are asserting their rights of free speech and participation in the nominating process. *Schonfeld* v. *Penza*, *supra*. Plaintiffs' materials, if uncontroverted by the defendants, could establish a prima facie case of such discrimination. Therefore, this court has jurisdiction to determine whether plaintiffs can sustain their claims. *McNail*, *supra* at 540-41.

In addition, defendants argue that this court lacks jurisdiction over this action because plaintiffs, in particular

Robert Lunnen, have failed to exhaust their internal union remedies.

> Requirement of internal exhaustion is discretionary. Exhaustion has not been demanded when plaintiffs will suffer irreparable harm in the exercise of their LMRDA rights, when resort to the internal appeals structure would be futile, or when the union has consistently taken a position opposed to plaintiff and shows no inclination to change its views.

Amalgamated Clothing Workers v. *Amalgamated Clothing Workers*, 473 F.2d 1303, 1308 (3d Cir. 1973) (citations omitted). On the basis of the materials before it, the court concludes that plaintiffs' failure to exhaust union remedies is not now a bar to jurisdiction over this action.

III.

TEMPORARY RELIEF

Under section 102 of the LMRDA a federal district court has authority to grant injunctive relief against violations of Title I of the Act. 29 U.S.C. § 412. It may issue a temporary restraining order enjoining an election to avoid irreparable injury to the plaintiffs. *Backo* v. *Local 281, United Brotherhood of Carpenters & Joiners*, 438 F.2d 176, 180 (2d Cir. 1970), *cert. denied*, 409 U.S. 858 (1971); *Sheridan* v. *United Brotherhood of Carpenters*, 191 F. Supp. 347, 349 (D. Del. 1961).

On the basis of the pleadings, memorandum and affidavits filed by the plaintiffs, the court finds that opening and counting the ballots before the hearing on the plaintiffs' motion for a preliminary injunction is completed will result in irreparable harm to the plaintiffs. Two elements of harm are present. First, the announcement of the results of an election which may prove to have been conducted in violation of section 101 of the LMRDA may have an adverse impact on plaintiffs' chances of success in any subsequent election and may discourage active

participation in union business by members of the dissident group. Second, allowing the election results to become final may, under 29 U.S.C. § 483, have the effect of depriving this court of jurisdiction over this action, *but see Kupau* v. *Yamamoto*, *supra*, and thereby compel plaintiffs to pursue a time-consuming complaint process with the Secretary of Labor. *Id.* Therefore, in order to preserve the status quo, the court will order the ballots received by Local No. 82 sealed and delivered to the court pending a final determination of plaintiff's motion for a preliminary injunction.

/s/ Robert E. Keeton
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

[Case Title Omitted In Printing]

ANSWER TO AMENDED COMPLAINT

Defendants answer the Amended Complaint as follows:

1. Denied

2. Denied

3. Denied

4. Deny that Dennis Bates is a member of Teamsters Local Union No. 82. Admit the remainder of the allegations.

5. Admit that the Plaintiffs are employees of companies in the Boston area which have negotiated collective bargaining agreements with Local 82. Deny there are approximately 14 companies in the Boston area with agreements with Local 82.

6. Deny that Joseph Trask is a spare. Admit the remainder of the allegation.

7. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegation.

8. Denied

9. Denied

10. Denied

11. Admitted

12. Admit sentence 1, sentence 2, sentence 5, and "Phillip Piemontese is the Chairman of the Election Committee of Local 82." Deny the remainder of the allegations.

13. Deny that true and accurate copies of the relevant portions of the Constitution and By-Laws are appended

as Exhibits A and B. Admit the remainder of the allegations.

14. Denied

15. Deny sentence 1. Admit sentence 2.

16. The Defendants are without knowledge or information sufficient to form a belief to the truth of the allegation in sentence 1. Deny sentence 2.

17. Denied

18. Denied

19. Admitted

20. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations.

21. Denied

22. Denied

23. Denied

24. Admit that prior to November 9, 1980, the expressed policy and practice of the Union regarding admittance into Union meetings was that every member had to show his dues receipt indicating payment of dues through the prior month. Deny the remainder of the allegations.

25. Admit that on November 9, 1980, Jerome Crowley and all other members were refused admittance to the meeting if they did not have their October, 1980 dues receipt. Deny the remainder of the allegations.

26. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations.

27. Denied

28. Deny that Article IV, Section 3(b) of the By-Laws bars members from running for elective office. Deny that Defendant Griffiths read a list of eight members who were ineligible to be candidates. Admit that at the November 9, 1980 meeting Defendant Griffiths read a list of members, including Plaintiffs Lunnin, Hayes, and Coyne, who were ineligible to be candidates for office due to their failure to comply with the Union's 24-month rule which is stated in the International Constitution and the Local Union's By-Laws. Admit that the 24-month rule bars members who have not paid their dues in full and on time in every month of the 24 months preceding nominations from being eligible to hold office.

29. Admit Plaintiff Coyne was disqualified under the 24-month rule due to the fact that he had paid his dues late in the preceding 24 months and on that occasion was 5 days late in making his payment. Admit that a true copy of Plaintiff Coyne's dues payment printout is attached as Exhibit C. Deny the remainder of the allegations.

30. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations.

31. Admit that Defendant Griffiths read a list of members whom he said were eligible to run for Union office. Admit that many more than the names read were eligible for office. Deny the remainder of the allegations.

32. Denied

33. Admit that Plaintiff Owens was nominated for office and was declared ineligible due to his non-compliance with the 24-month rule. Admit that John Lynch is listed as a candidate on the ballot. Deny the remainder of the allegations.

34. Denied

35. Admit sentence 1. Deny sentence 2.

36. Deny sentence 1. Admit sentence 2.

37. Admit sentence 1. Deny sentence 2.

38. Denied

39. Admit sentences 1 and 2. Deny sentence 3.

40. Denied

41. Admit sentence 1. Deny the remainder of the allegations.

42. Denied

43. Denied

44. Denied

45. Denied

46. Denied

47. Denied

48. Denied

49. Denied

50. Denied

51. Denied

52. Denied

Defendants present the following defenses:

I. The Court lacks subject matter jurisdiction because the subject matter of the complaint lies within the exclusive jurisdiction of the Secretary of Labor to investigate as provided by Title IV of the Labor-Management Reporting and Disclosure Act.

II. The complaint fails to state a claim against the Defendants upon which relief can be granted as the Plaintiffs have failed to exhaust their internal union remedies.

Respectfully submitted,

By the Defendants,

By Their Attorney,

/s/ Kathryn M. Noonan
KATHRYN M. NOONAN
Noonan & Robboy
6 Beacon Street
Boston, MA 02108
(617) 720-0181

[Certificate of Service Omitted in Printing]

LETTER OF DEFENDANTS TO COURT

NOONAN & ROBBOY
ATTORNEYS AT LAW

6 Beacon Street
Boston, Massachusetts 02108

January 9, 1981

The Honorable Robert E. Keeton
United States District Court for
District of Massachusetts
U.S. Post Office & Courthouse
Boston, Massachusetts 02109

RE: Jerome Crowley et al

v.

Local No. 82 et al

Civil Action No. 80-2680-K

Dear Judge Keeton:

On behalf of the Defendants in the above-captioned matter I request a status conference or hearing so that I may advise the Court that the Union is prepared to hold a new nomination meeting and mail ballot election, with the permission of the Court. The Union will request the Joint Council to conduct the nomination and election process and will send notice of the nomination meeting to the last known address of members. The notice will advise members of the eligibility requirements to run for office including the 24 month continuous good standing rule. The notice will also advise members that the 50% attendance rule is waived for this nomination and election. All members in good standing will be permitted to attend this meeting and make nominations. Members will be permitted to pay their dues at the door to bring

themselves in good standing in order to gain entrance to the nomination meeting.

Another reason for conducting the status conference is to request relief from the production of the 24 month dues payment history of the membership, if the Union is allowed to conduct another nomination and election. By conducting another nomination and election I believe the relief requested by the Plaintiffs in their Modified Motion for Preliminary Injunction regarding the nominations and election process is substantially satisfied but for the elimination of the 24 month continuous good standing rule for eligibility for office. With that sole issue remaining the Court is faced solely with a Title IV claim and accordingly lacks jurisdiction to consider the validity of the rule. On that basis I would request relief from the production request or at least request a stay in the production request until the Court determines whether it has jurisdiction to rule on the validity of the rule notwithstanding the Union's lack of contest on the conduct of a second nomination and election.

Very truly yours,

/s/ Kathryn M. Noonan
KATHRYN M. NOONAN

cc: Kurt M. Pressman

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

[Title Omitted in Printing]

STIPULATIONS OF THE DEFENDANTS

Teamsters Local 82 is prepared to and will conduct a second nomination and mail ballot election for the election of officers under the following terms, provided the Court permits a change in the status quo preserved by its Order of December 12, 1980:

1) Teamsters Local 82 will request that Teamsters Joint Council 10 make provision for, supervise and, in all other respects, conduct a nomination meeting and mail ballot election for the officers of Local 82 in accordance with the Constitution and By-Laws of Local 82, the Constitution of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and applicable law.

2) Each member of Local 82 will be mailed a combined notice of nominations and election at his last known home address at least 20 days prior to the date of the nomination meeting. In addition, such notices will be posted at the facilities of all employers which have collective bargaining agreements with Local 82.

3) The combined notice of nomination and election will contain the following information:

a) The date, time and place of the nomination meeting.

b) The list of offices to be filled: President and Business Agent, Vice-President, Secretary-Treasurer and Business Agent, Recording Secretary and 3 Trustees who together comprise the Executive Board.

c) The duration of the terms of office: January 1981 - December 1983.

d) The eligibility requirements for members to attend the nomination meeting: Every member whose dues are paid up through the month prior to the month in which the nominations are held has the right to attend the nomination meeting. Members may pay their dues at the door prior to the commencement of the nomination meeting to bring their dues payments current through the month prior to the month in which the nomination meeting is held.

e) The eligibility requirements to run for office:

i) Every member in good standing, by the payment of his dues on or before the last business day of the current month, in accordance with the International Constitution, and who has been in such continuous good standing for each consecutive month in the twenty-four (24) month period immediately prior to nominations, shall be eligible to hold office if otherwise qualified under the International Constitution, Local By-Laws and applicable law. Payment of dues after their due date does not restore good standing status for such month in computing the continuous 24 month good standing status as a condition of eligibility for office.

ii) A member otherwise qualified to run for office must be nominated at the nomination meeting by a member in good standing other than the nominee and seconded by a member in good standing other than the nominee. A member is entitled to nominate only one candidate for each office.

iii) The 50% meeting attendance eligibility requirement contained in Article VI of the Local Union By-Laws is waived for this nomination and election.

f) The nomination and election rules are set forth in the Local By-Laws and International Constitution which are available for inspection at the Local 82 offices and may be purchased upon payment of $.50.

g) All officers and business agents elected in the forthcoming election shall, by virtue of such election, be delegates to any International Convention which may take place during their term of office and the officers elected in the forthcoming election shall be delegates to all Teamster subordinate bodies and all other conventions in accordance with the provisions of Article II, Section 4(f) and Article III, Section 5 of the International Constitution.

h) Prior to the nomination meeting a member may request that his eligibility to hold office be reviewed. An official of Joint Council 10 shall be designated by Joint Council 10 to answer such inquiries. The designated official of Joint Council 10 shall make a report on the eligibility of that member within 5 days thereafter to any interested member.

i) All arrangements for distribution of campaign literature shall be made by Joint Council 10 consistent with the By-Laws, International Constitution and applicable Law.

j) The election shall be conducted by mail ballot. The notice will specify the date ballots and other election materials and instructions will be mailed, the date and time ballots will be collected for counting and the location of the ballot count. The notice will also specify that voting packets will be mailed to each member's last known home address at least 20 days before the counting of the ballots. The notice will describe

the procedure to be followed to obtain a ballot if the member does not receive a ballot in the mail. If two ballots are received from the same member, both will be declared null and void and not counted.

k) A member's vote will be counted only if he has paid his dues through the month prior to the month in which the election is held. Members may pay their dues before the close of business at 5:00 p.m. on the day prior to the counting of the ballots.

l) Each candidate, at his own expense, shall have the right to have an observer other than himself present for the mailing of ballots, the removal of ballots from the post office and at the subsequent counting of the ballots.

4) The nomination meeting will be held on Sunday, March 22, 1981 and the ballots will be counted on Saturday, April 25, 1981.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

[Case Title Omitted in Printing]

SUPPLEMENTAL STIPULATIONS OF THE DEFENDANTS

Teamsters Local 82 submits the following supplemental stipulations to clarify matters raised by the Court at the hearing of January 15, 1981:

1) The notice of nomination and election will notify members that the purpose of the meeting will be the nomination of officers.

2) The notice of the nomination and election will advise members that they may be admitted to the nomination meeting by presentation of a TITAN computer receipt showing payment through the prior month or by presentation of a TITAN receipt and a temporary receipt issued after the date of issue of the TITAN receipt which verifies payment through the prior month or by payment at the door of their dues through the prior month.

3) The nomination and election notice will contain a statement that in order to be nominated for office a member must either be present at the meeting to accept the nomination or must have a signed statement indicating his acceptance of nomination for a particular office delivered to the presiding official at said meeting.

4) The nominations and election will be conducted consistent with the procedures described in Section II B of the Defendants' Supplemental Memorandum filed 1/22/81.

Respectfully submitted,

/s/ Kathryn Noonan
KATHRYN NOONAN
6 Beacon Street
Boston, MA 02108
(617) 720-0181

/s/ Gary S. Witlen (KAN)
GARY S. WITLEN
25 Louisiana Ave., N.W.
Washington, D.C. 20001
(202) 624-7466

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

[Case Title Omitted in Printing]

PLAINTIFFS' MOTION TO AMEND COMPLAINT TO CONFORM TO THE EVIDENCE

The Plaintiffs in the above-entitled matter hereby move the Court for leave to amend their Complaint to conform to the evidence presented at the hearing on their Motion For Preliminary Injunction, by adding the following paragraphs:

17a. Defendant Local 82 and its officers have on several occasions raised its rate of monthly dues for members from the rate of $9.00, established in September, 1976 to the present rate of $15.00, without a vote of the membership and at times and in a manner other than that prescribed by the International Constitution of the union.

32a. The Defendants applied the "24 month rule" in a discriminatory fashion in that they (a) declared Plaintiff James Hayes ineligible, although he in fact was in compliance with said rule, and (b) declared Paul Maguire, Joseph Crowley, and Wilfred Pye, all of whom were either incumbent officers and/or close supporters of the Defendants, eligible even though those three members were not in compliance with said rule.

53. All increases in the rate of dues by Defendant Local 82 since the $9.00 rate of September, 1976, violated 29 U.S.C. § 411(3) and Article X § 3(d) of the International Constitution.

54. The Defendants' discriminatory application of the 24 month rule constitutes an unlawful retaliation for the Plaintiff's expression of their views within the union in violation of 29 U.S.C. § 411 (a) (1).

55. The Defendants' discriminatory application of the 24 month rule denied Plaintiffs their equal right to nominate and vote for eligible candidates, in violation of 29 U.S.C. § 411 (a) (1).

PRAYERS FOR RELIEF

8. Declare that all dues increases by Local 82 since September 1976 are invalid and that any member of Local 82 is eligible for union office if he is in compliance with the 24 month rule once all his dues payments in excess of $9.00 per month are credited prospectively towards subsequent dues payments, and if he is otherwise eligible for union office.

By their attorneys,

/s/ Mark D. Stern
MARK D. STERN

/s/ Kurt H. Pressman
KURT H. PRESSMAN

/s/ Benjamin Hiller
BENJAMIN HILLER
Goldstein, Pressman and Stern
678 Mass. Avenue
Cambridge, Ma. 02139
(617) 492-2211

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

[Case Title Omitted in Printing]

ORDER

February 12, 1981

The parties are requested to submit their positions on the proposed order, stated below, by Tuesday, February 17, 1981. A conference will be scheduled for some time after February 17th, for consideration of the proposed order as well as Plaintiffs' Motion for Supplemental Preliminary Relief.

Considerable portions of the proposed order are derived from defendants' proffered stipulations. If, however, in light of the court's modifications, defendants wish the order not to state that paragraphs 3-5 of the order are substantially derived from the stipulations filed by defendants, they should so inform the court at the conference. In addition, the parties are directed to consult to determine if they can agree upon a method by which proposed order can be either recorded or otherwise memorialized in order to reduce the likelihood that an extensive evidentiary hearing would be needed should a dispute concerning the conduct of that meeting arise. Counsel are requested to ascertain whether Joint Council 10 would be prepared to conduct the election in conformity with paragraph 9 of the proposed order.

Proposed Order Concerning the Conduct of the Election

Based on the Findings of Fact and Conclusions of Law incorporated in the court's Memorandum of this date, and defendants' stipulations, from which paragraphs 3, 4 and 5 of this order are substantially derived, it is hereby ORDERED and DECLARED that:

1. The order entered by the court on December 12, 1980 is modified as set forth below.

2. The nominations received at the November 9, 1980 meeting of defendant Local 82, and the election originally scheduled to be completed on December 13, 1980, are null and void. The ballots from that election shall remain in the custody of an officer of this court.

3. Within — days, Local 82 shall provide for a nomination meeting and mail ballot election for the officers of Local 82, to be supervised and conducted by a third party satisfying the requirements set forth in paragraph 9 of this order. Subject to applicable law and this order, the nomination meeting and election shall be conducted in accordance with the Constitution and By-laws of Local 82, the Constitution of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

4. Each member of Local 82 will be mailed a combined notice of the nominations meeting and election at his last known home address at least 30 days before the date of the nomination meeting. In addition, such notices will be posted, at least 30 days before the date of the nomination meeting, at the facilities of all employers that have collective bargaining agreements with Local 82.

5. The combined notice of nomination and election will contain the following information:

a. The date, time and place of the nomination meeting.

b. A declaration that:

> The purpose of this meeting will be the nomination of officers for Local 82. After hearings in the Federal District Court, the incumbent officers of Local 82 have offered to have, and the court has ordered, a new election, which will be conducted by a third party in order to assure that the nominations and election are conducted in a fair and orderly fashion.

c. The list of offices to be filled: President and Business-Agent, Vice-President, Secretary-Treasurer and Business-Agent, Recording Secretary and three Trustees, all of which together constitute the Executive Board.

d. The duration of the terms of office: January 1981-December 1983.

e. The eligibility requirements for members to attend the nominations meeting: Every member whose dues are paid up through the month before the month in which the nominations meeting is conducted has the right to attend the nominations meeting. Members may be admitted to the nomination meeting upon presentation of a TITAN computer receipt showing payment through the prior month or upon presentation of a TITAN receipt supplemented by payment at the door or payment evidenced by a temporary receipt, which TITAN receipt and other evidence taken together verify payment of dues through the prior month.

f. The eligibility requirements to run for office:

(i) Every member in good standing, by the payment of his dues on or before the last business day of the current month, in accordance with the International Constitution, who has been in such continuous good standing for each consecutive month in the twenty-four (24) month period immediately prior to nominations, shall be eligible to hold office if otherwise qualified under the International Constitution, Local By-Laws and applicable law. Dues are considered to have been received by the Local Union when they are in the physical possession of the Union or its authorized agent. Thus, dues paid by mail are received when the dues are delivered to the Union; dues paid in person at the Union hall are received at the time tendered; and dues paid to a steward, business agent, or other authorized collection agent are received when paid to the agent. Payment of

dues after their due date does not restore good standing status for such month in computing the continuous 24 month good standing status as a condition of eligibility for office. However, a member who has made an incorrect dues payment in any month in which the rate of dues has been changed shall be considered in good standing for the month(s) in question so long as he paid the additional amount owed within 3 months of the dues increase.

(ii) A member otherwise qualified to run for office must be nominated at the nomination meeting by a member in good standing other than the nominee and seconded by a member in good standing other than the nominee. A member is entitled to nominate only one candidate for each office.

(iii) The 50% meeting attendance eligibility requirement contained in Article VI of the Local Union By-Laws is waived for this nomination and election.

(iv) In order to be nominated for office, a member must either be present at the nomination meeting to accept the nomination or must have a signed statement indicating his acceptance of nomination for a particular office delivered to the presiding official at said meeting.

g. The nomination and election rules are set forth in the Local By-Laws and International Constitution which are available for inspection at the Local 82 offices and may be purchased upon payment of $.50.

h. All officers and business agents elected in the forthcoming election shall, by virtue of such election, be delegates to any International Convention which may take place during their term of office, and the officers elected in the forthcoming election shall be delegates to all Teamster subordinate bodies and all other conventions in accordance with the provisions of Article II, Section 4(f) and Article III, Section 5 of the International Constitution.

i. Before the nomination meeting, a member may request that his eligibility to hold office be reviewed. An official of the third party conducting the election shall be designated by such third party to answer such inquiries. The designated official shall make a report on the eligibility of that member within 5 days thereafter to any interested member. If a report of ineligibility because of late payment is challenged on the ground that the TITAN receipt is incorrect and payment was actually delivered to the Union sooner than the date recorded on TITAN, the third party conducting the election shall hear the challenge and make a written determination within five days.

j. All arrangements for distribution of campaign literature shall be made by the third party conducting the election consistent with the By-Laws, International Constitution and applicable law.

k. The election shall be conducted by mail ballot. The notice will specify the date ballots and other election materials and instructions will be mailed, the date and time ballots will be collected for counting, and the location of the ballot count. The notice will also specify that voting packets will be mailed to each member's last known home address at least 20 days before the counting of the ballots. The notice will describe the procedure to be followed to obtain a ballot if the member does not receive a ballot in the mail. If two ballots are received from the same member, both will be declared null and void and not counted.

l. A member's vote will be counted only if he has paid his dues through the month prior to the month in which the election is held. Members may pay their dues before the close of business at 5:00 p.m. on the day prior to the counting of the ballots.

m. Each candidate, at his own expense, shall have the right to have an observer other than himself present for

the mailing of ballots, the removal of ballots from the post office, and the subsequent counting of the ballots.

6. All members meeting the eligibility criteria set forth in paragraph 5(e) shall be permitted to attend the nominations meeting.

7. All members meeting the eligibility criteria set forth in paragraph 5(f) shall be permitted to run for office.

8. All members meeting the eligibility criteria set forth in paragraph 5(l) shall be permitted to vote.

9. A third party seeking to supervise and conduct the nominations and election required by this order shall file an undertaking with the court indicating its consent to the terms and conditions of this order, and in addition, shall:

a. Provide for the designation of an official to answer inquiries and make reports on members' eligibility to hold office as set forth in paragraph 5(i).

b. Make all arrangements for distribution of campaign literature as set forth in paragraph 5(j) of this order.

c. Ensure that no member of said third party who participates in the supervision or conduct of the nomination and election required by this order shall have any interest in the outcome of the election.

10. The defendants, Bart A. Griffiths, George Harris, Phillip Piemontese, and Local 82, are enjoined from violating Title I of the Labor Management Reporting and Disclosure Act, 29 U.S.C. § 411 *et seq.*

11. This order shall remain in effect until further order of this court.

/s/ Robert Keeton
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

[Case Title Omitted In Printing]

ORDER

April 21, 1981

At a conference on Thursday, April 23, 1981, at 10:00 a.m., the parties are requested to state their positions on the modifications, stated below, in the court's proposed order of February 12, 1981. Any objection previously asserted to the court's proposed order of February 12, 1981 need not be restated to preserve an exception to the court's rulings. Counsel are requested to ascertain whether Lawrence Katz and Paul Keenan will consent to the terms and conditions of the modified proposed order, and whether they can be present at the conference on the 23rd.

Modified Proposed Order Concerning The Conduct of the Election

For the reasons stated in open court and in a memorandum to be filed, and based upon the findings and conclusions stated in open court and in the memorandum, it is hereby ORDERED and DECLARED that:

1. The order entered by the court on December 12, 1980 is modified as set forth below.

2. The nominations received at the November 9, 1980 meeting of defendant Local 82, and the election originally scheduled to be completed on December 13, 1980, are null and void. The ballots from that election shall remain in the custody of an officer of this court.

3. Local 82 shall provide for a nomination meeting and mail ballot election for the officers of Local 82, to be supervised and conducted by Lawrence Katz, Esquire, in

conjunction with the Honest Ballot Association of New England, ("the Arbitrators") in accordance with paragraph 9 of this order. The nomination meeting shall be held within 60 days of the entry of this order. Subject to applicable law and this order, the nomination meeting and election shall be conducted in accordance with the Constitution and By-laws of Local 82, the Constitution of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

4. Under the supervision of the Arbitrators, Local 82 shall mail each member a combined notice of the nomination meeting and election at his last known home address at least 40 days before the date of the nomination meeting, and, in addition, shall post notices at least 40 days before the date of the nomination meeting, at the facilities of all employers that have collective bargaining agreements with Local 82.

5. The combined notice or nomination and election will contain the following information:

a. The date, time and place of the nomination meeting.

b. A declaration that:

> The purpose of this meeting will be the nomination of officers for Local 82. After hearings in the Federal District Court, the incumbent officers of Local 82 have offered to have, and the court has ordered, a new election, which will be conducted by a third party in order to assure that the nominations and election are conducted in a fair and orderly fashion.

c. The list of offices to be filled: President and Business-Agent, Vice-President, Secretary-Treasurer, and Business-Agent, Recording Secretary and Three Trustees, all of whom together constitute the Executive Board.

d. The duration of the terms of office: January 1981-December 1983.

e. The eligibility requirements for members to attend the nominations meeting: Every member whose dues are paid up through the month before the month in which the nomination meeting is conducted has the right to attend the nomination meeting. Members may be admitted to the nomination meeting upon presentation of a TITAN computer receipt showing payment through the prior month or upon presentation of a TITAN receipt supplemented by payment at the door or payment evidenced by a temporary receipt, which TITAN receipt and other evidence taken together verify payment of dues through the prior month.

f. The eligibility requirements to run for office:

(i) Every member in good standing, by the payment of his dues on or before the last business day of the current month, in accordance with the International Constitution, who has been in such continuous good standing for each consecutive month in the twenty-four (24) month period immediately prior to nominations, shall be eligible to hold office if otherwise qualified under the International Constitution, Local By-Laws and applicable law. Dues are considered to have been received by the Local Union when they are in the physical possession of the Union or its authorized agent. Thus, dues paid by mail are received when the dues are delivered to the Union; dues paid in person at the Union hall are received at the time tendered; and dues paid to a steward, business agent, or other authorized collection agent are received when paid to the agent. Payment of dues after their due date does not restore good standing status for such month in computing the continuous 24 month good standing status as a condition of eligibility for office. However, a member who has made an incorrect dues payment in any month in which the rate of dues has been changed shall be considered in good standing for the month(s) in question so long as he paid the difference in the

rates of dues owed to the local Union before the start of the nomination meeting scheduled under the order of this court.

(ii) Any member who claims that he fails to meet the eligibility requirements stated above only because

(A) between June 1979 and October 1980, he failed to pay increases in his dues implemented in June or August 1979; OR

(B) between November 1979 and October 1980, he failed to pay increases in his dues implemented in November and December 1979 and January and April 1980; must file a claim in writing with the Arbitrators, together with supporting evidence, no later than 15 days before the nomination meeting. The Arbitrators shall make findings as to whether the claimant satisfies the criteria set forth in (A) or (B), and shall compile the claims and findings into a report to be filed with the court not later than 7 days before the nominations meeting, upon which the court shall determine whether a claimant should be permitted to run for office despite his failure to protest sooner the dues increases listed above.

(iii) A member otherwise qualified to run for office must be nominated at the nomination meeting by a member in good standing other than the nominee and seconded by a member in good standing other than the nominee. A member is entitled to nominate only one candidate for each office.

(iv) The 50% meeting attendance eligibility requirement contained in Article VI of the Local Union By-Laws is waived for this nomination and election.

(v) In order to be nominated for office, a member must either be present at the nomination meeting to accept the nomination or must have a signed statement indicating his acceptance of nomination for a particular office delivered to the presiding official at said meeting.

g. The nomination and election rules are set forth in the Local By-Laws and International Constitution which are available for inspection at the Local 82 offices and may be purchased upon payment of $.50.

h. All officers and business agents elected in the forthcoming election shall, by virtue of such election, be delegates to any International Convention which may take place during their term of office, and the officers elected in the forthcoming election shall be delegates to all Teamster subordinate bodies and all other conventions in accordance with the provisions of Article II, Section 4(f) and Article III, Section 5 of the International Constitution.

i. At any time until 25 days before the nomination meeting, a member may request the Arbitrators to review his eligibility to hold office. The Arbitrators shall make a report on the eligibility of that member within 5 days thereafter to any interested member. If a report of ineligibility is challenged on the ground that the TITAN receipt is incorrect, the third party conducting the election shall hear the challenge and make a written determination within five days. Any member asserting that the Arbitrators' determination of the facts underlying his claim for eligibility is not supported by substantial evidence must file a request to set aside the Arbitrators' decision with the Arbitrators within five days of the decision, for transmittal to the court along with a report by the Arbitrators not later than 7 days before the nominations meeting.

j. All arrangements for distribution of campaign literature shall be made by the Arbitrators consistent with the By-Laws, International Constitution and applicable law.

k. The election shall be conducted by mail ballot. The notice will specify the date ballots and other election materials and instruction will be mailed, the date and time ballots will be collected for counting, and the location of

the ballot count. The notice will also specify that voting packets will be mailed to each member's last known home address at least 20 days before the counting of the ballots. The notice will describe the procedure to be followed to obtain a ballot if the member does not receive a ballot in the mail. If two ballots are received from the same member, both will be declared null and void and not counted.

l. A member's vote will be counted only if he has paid his dues through the month prior to the month in which the election is held. Members may pay their dues before the close of business at 5:00 p.m. on the day prior to the counting of the ballots.

m. Each candidate, at his own expense, shall have the right to have an observer other than himself present for the mailing of ballots, the removal of ballots from the post office, and the subsequent counting of the ballots.

6. All members meeting the eligibility criteria set forth in paragraph 5(e) shall be permitted to attend the nominations meeting.

7. All members meeting the eligibility criteria set forth in paragraph 5(f) shall be permitted to run for office.

8. All members meeting the eligibility criteria set forth in paragraph 5(l) shall be permitted to vote.

9. The Arbitrators seeking to supervise and conduct the nominations and election required by this order shall file an undertaking with the court indicating their consent to the terms and conditions of this order, and in addition, shall:

a. Provide for the designation of an official to answer inquiries and make reports on members' eligibility to hold office as set forth in paragraphs 5(f)(ii) and 5(i).

b. Make all arrangements for distribution of campaign literature as set forth in paragraph 5(j) of this order.

c. Ensure that no member of the Arbitrators who participates in the supervision or conduct of the nomination and election required by this order shall have any interest in the outcome of the election.

10. The defendants, Bart A. Griffiths, George Harris, Phillip Piemontese, and Local 82, are enjoined from violating the equal rights of members of Local 82, guaranteed by 29 U.S.C. § 411,

(a) to nominate candidates in the election to be conducted in accordance with this order, to vote in the election, to attend all meetings of Local 82 in which business related in any way to this election is conducted, and to participate in the deliberations and voting upon business of such meetings, subject to the rules and regulations of the constitution and bylaws of the union;

(b) to meet and assemble freely with other members and to express any views, arguments, or opinions relating to the nominations and election to be conducted in accordance with this order, and to express, at meetings of Local 82 in which business in conducted relating in any way to this election, any views upon candidates or upon any business properly before such meetings, subject to the rules and regulations established in this order and in the rules and regulations of the constitution and bylaws of the union.

11. This order shall remain in effect until further order of this court.

12. Local 82 shall pay the fees and expenses incurred by the Arbitrators in discharging their responsibilities under this order.

13. Plaintiffs are not required to post a security under Fed. R. Civ. P. 65(c).

/s/ Robert E. Keeton
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

[Case Title Omitted in Printing]

STIPULATION OF PARTIES REGARDING LANGUAGE FOR MODIFIED PROPOSED ORDER CONCERNING THE CONDUCT OF THE ELECTION

The parties hereby propose the following modification to the Modified Proposed Order Concerning the Conduct of the Election issued by the Court on April 21, 1981:

Paragraph 4. Substitute: Under the supervision of the Arbitrators, Local 82 shall mail each member a combined notice of the nomination meeting and election at his last known home address at least 40 days before the date of the nomination meeting, and, in addition, shall mail notices for posting at least 40 days before the date of the nomination meeting to the stewards or, if there is no steward, to the employer, at the facilities of all employers that have collective bargaining agreements with Local 82.

Paragraph 5(d). Substitute: The officers elected in the upcoming election will complete the term of office which commenced on January 1, 1981 and which will expire on December 31, 1983.

Paragraph 5(e). Add: Local Union officers, or their designated agents, shall receive dues payments at the door and shall issue temporary dues receipts therefor.

Paragraph 5(f)(ii). Delete in its entirety.

Paragraph 5(f)(iii). Redesignate 5(f)(ii) and amend 2nd sentence to read "A member is entitled to nominate or second the nomination of only one candidate for each office."

Paragraph 5(f)(iv). Redesignate as paragraph 5(f)(iii).

Paragraph 5(f)(v). Redesignate as paragraph 5(f)(iv).

New Paragraph 5(f)(v). Members intending to run for office are urged to verify their own eligibility as well as the eligibility of their potential nominators and seconders prior to the nominations meeting by making a request, in writing, to the arbitrator. The arbitrator shall render decisions concerning the eligibility of any candidate, nominator, or seconder, in accordance with the procedures set forth in paragraph 5(i) of this notice.

Paragraph 5(i). Any member may request in writing that the arbitrator review his eligibility to hold office, or to participate in the nominations meeting as a nominator or seconder at any time prior to the nominations meeting. The arbitrators shall make a report on the eligibility of that member within seven days thereafter to any interested member. Any member may challenge the determination of the arbitrator that a member is either eligible or not eligible to be a candidate for office, or be a nominator or seconder at the nominations meeting. Any challenge to a decision of the arbitrators must be made, in writing, within two days of the arbitrators' decision and must set forth the ground on which the challenge is based. The third party conducting the election shall hear the challenge and make a written determination within five days of receiving the challenge. Any member asserting that the arbitrators' determination of the facts underlying his claim for eligibility is not supported by substantial evidence must file a request to set aside the arbitrators' decision with the arbitrators within five days of the decision, for transmittal to the court along with a report by the arbitrators. After the nomination meeting, the arbitrator shall review the eligibility of any candidate whose eligibility had not previously been determined and shall make a determination of each such candidate's eligibility within 48 hours of the nominations meeting. If, following the nominations meeting, the arbitrator de-

termines that a candidate is ineligible, he shall notify the candidate by telephone within 48 hours of the nominations meeting and shall confirm this communication to the candidate in writing. In addition, the arbitrator shall notify counsel for the plaintiffs and defendants by telephone of the eligibility determinations made following the nominations meeting, within 48 hours of the nominations meeting, and shall confirm this communication to counsel in writing. Challenges to the decisions of the arbitrator concerning the eligibility of the nominees must be filed, in writing, with the arbitrator within 48 hours of the arbitrator's decision and must set forth the specific basis upon which the challenge is made. The arbitrator conducting the election shall hear the challenge and make a written determination within 7 days. Any member wishing to appeal the determination of the arbitrator must file a request to set aside the arbitrator's decision, with the arbitrator, within 48 hours of the decision, for transmittal to the court along with a report by the arbitrator.

Paragraph 12. Local 82 shall pay the fees and expenses incurred by the arbitrators in discharging their responsibilities under this order in the amount determined by the Court and shall advance to the arbitrators the amounts necessary to cover the postage required to mail the notices and balloting materials necessitated by this order.

For the Plaintiffs,

/s/ Kurt Pressman 5/48/1

KURT PRESSMAN (Date)

For the Defendants,

/s/ Kathryn M. Noonan

KATHRYN M. NOONAN (Date)

U.S. DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

TRANSCRIPT

December 5, 1980

* * * *

[11] MR. PRESSMAN: In our relief we are asking that the defendants be ordered to collect these ballots but enjoined from counting them and that the Court order the defendants to reopen the nominations to give all members proper notice and equal notice in accordance with the statute and with their own bylaws, to order that the defendants include in [12] the notice of said meeting a statement that no member of the union shall be disqualified from attending the meeting or nominating candidates on account of the fact that they were either employed as spares or because they have exercised their rights to freedom of speech or because they haven't paid their dues on time every month for the last 24 months unless the defendants choose to allow some sort of grace period for that.

* * * *

[16] . . . All their claims are Title 1 claims. There are questions regarding eligibility requirements which if taken alone might be Title 4 claims. When I say Title 4, basically what we are talking about is that Title 4 sets forth certain election procedures and the Supreme Court in the case of Calhoun v. Harvey has said the issue of eligibility requirements is properly a matter that comes under Title 4. The significance of this is that when Title 4 rights are violated the party must seek relief by first exhausting all his internal union remedies up to a certain point in time, then filing a complaint with the Secretary of Labor. If the Secretary of Labor finds probable cause the Secretary of Labor can go into federal court to seek the election conduct bill be overturned.

However what we are claiming here is that although there is one violation, the strict application of the eligibility rule which is a Title 4 complaint if looked at narrowly, then we have to look at this in the overall context of being a series of actions of a purposeful and [17] deliberate attempt by union officials to suppress dissent within the union and that this is just one more act, along with the seven or eight other acts, the others of which are Title 1 violations, and that it would be appropriate in this case to enjoin the strict application of the eligibility rule along with providing Title 1 relief, injunctive relief of the other violations for two reasons. One, it is not an isolated event but the application of this rule is part of the pattern of suppressing free speech within the union by restricting eligibility to only a small number of people and furthermore not even announcing all the people who would even be eligible under the 24-month rule but only announcing names of primarily the defendants and their close supporters. In that context we don't think the plaintiffs can get full relief to their Title 1 rights unless the application of the 24-month rule is also enjoined.

Secondly I would say that if the Court were to grant injunctive relief as to all the other violations it would in fact violate the purpose of the statute as well as the spirit of the Supreme Court in Calhoun versus Harvey not to [18] enjoin this rule. In that case what the Court was saying, they don't want individual union members to be able to disrupt elections by challenging eligibility requirements. In this case if the Court grants relief for a new nominating meeting, all eligible candidates to be nominated, enjoin the discipline of Lunnen, grant the other relief requested, the defendants are going to have to hold a new election and in that event I think it would be appropriate for the Court to rule that this eligibility requirement is improper because otherwise we are going to have a situation where the defendants are again going to hold an election and where the courts have held the strict eligibility requirement is unlawful with the result in six

months or a year the election will have to be run again because this eligibility requirement still remains outstanding.

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[19] MS. NOONAN: Your Honor, I am Kathryn [20] Noonan. I am representing the defendants in this case.

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[21] Let me at this point say that it's the position of the defendants that this Court has no jurisdiction over this action. As Mr. Pressman tried to slide over and toward the end of his closing remarks there is an interrelationship here between Title 1 of the Labor/Management Reform Act of 1959 and Title 4 of that act. Title 1 contains a bill of rights talking about the equal rights of members to attend meetings and nominate candidates. Based on the information that I think you have before you, of the plaintiffs only one plaintiff, Jerome Crowley, was denied the right to enter the nominating meeting of November 9. So really we are not talking about a whole class of plaintiffs who were not able to attend a meeting on November 9 and also participate in that meeting on November 9.

I note no allegations in the motion for preliminary relief or in the complaint that the plaintiffs who were at the meeting were denied the right to speak.

[22] But in any event, moving to the question of your jurisdiction, Title 1 sets out a certain bill of rights. Title 4 is entitled "Elections" and it sets out specifically, your Honor, certain protections for union members in the election of their officers. But what is more important here, your Honor, is that if union members have some complaint about the procedures, the nominating procedure, the election procedure used by their local union, they are required by Title 4 to file an action with the Secretary of Labor to seek relief. That is their exclusive remedy. Individuals do not have a private right of action to seek relief from supposed violations of their rights to a free and democratic nomination and election procedure.

If you look at the motion for preliminary relief, the great bulk of the allegations speak to the conduct of the local union on November 9, 1980. They are protests in opposition to the procedure used in the nomination and election procedure, period. They are not general allegations about— I shouldn't say general, they are not specific allegations about any other union meeting, your Honor. They focus solely on the November 9, 1980 [23] nominating meeting.

Therefore I suggest to you, your Honor, that any claim that they may have with respect to violations of their rights under that particular—as a result of that particular meeting must be remedied by their filing an action with the Secretary of Labor.

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[27] THE COURT: Wouldn't it be relevant evidence what number of people are eligible if this rule is applied? That is, if the allegation is sustained that it produces such a small percentage of the 750 membership on its face there is some reason to be concerned about whether the rule is not an inappropriate one and in light of the purposes of the purposes of the statute—

MS. NOONAN: I grant you the question as to the impact of that particular rule would be a relevant consideration to whatever Court is looking at a challenge to that particular eligibility procedure. But I suggest to you that Title 4 of the LMRDA reserves that inquiry first of all to the Secretary of Labor and if he then finds probable cause that a violation of the statute has occurred, i.e., that there is an unreasonable qualification applied to the right to be nominated, then the Secretary of Labor then comes into Court and files an action in his own name against the responsible union officials.

So that for your inquiry this morning and for the inquiry of this Court f this case I suggest that is not a relevant consideration. It's an interesting point if this case were before [28] the Secretary of Labor if we were

here defending a case brought by the Secretary of Labor. We are not in that posture and I think my brother himself has conceded that that kind of a question, the eligibility to run for office, is clearly within Title 4 of the act.

But in any event, your Honor, if you think that kind of information, you would like that kind of information before you rule on the motion for preliminary relief then I will inquire of my clients and submit an affidavit as to the impact of that rule.

But as I was indicating, your Honor, the Supreme Court in Calhoun versus Harvey directed the district courts not to be fooled by the allegations of a complaint that Title 1 of the LMRDA had been violated but rather to look at the substance of the claim, to understand and analyze exactly what it is the plaintiffs are seeking and I suggest to you here, your Honor, they are seeking relief which can only be brought or obtained under Title 4 and they are seeking relief from violations, claimed violations which occurred under Title 4, with the one exception of Mr. Lunnen's disciplinary claim. • • •

• • • •

December 12, 1980

[2] THE COURT: I think perhaps it will advance matters if I advise you first that I have examined your memorand[illegible]n the jurisdictional question and I conclude that Calhoun is clearly distinguishable. It did not involve any claim of discrimination in the application of criteria for participation in the election process. There are plainly in this case such allegations of discrimination and there are a number of Court of Appeals decisions that have distinguished Calhoun on this ground and have quite clearly held that the District Court has jurisdiction over Title 1 claims of discrimination regardless of the fact that it relates also to Title 4 election violations, so I deny the de-

fendant's challenge to jurisdiction and hold that the Court does have jurisdiction over the claims of discrimination.

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[11] THE COURT: I will not allow the election process to be consummated while this matter is under consideration by me. It may well be that it's being purportedly consummated would have no legal effect but I do not think I should allow any [12] change in the existing circumstances while this hearing is pending. Therefore unless there is agreement, and I'm not even sure that under those circumstances I should permit it, unless there is agreement it seems to me I must act today to require that there be no change in existing circumstances to protect the jurisdiction of this Court.

• • • •

December 19, 1980

[8] MR. PRESSMAN: Mr. Lunnin.

ROBERT EDWARD LUNNIN, Sworn

DIRECT EXAMINATION

BY MR. PRESSMAN:

Q. Mr. Lunnin, please address your answers to the Court, not to me, and speak loudly. What is your full name?

A. Robert Edward Lunnin.

Q. And where do you live?

A. 761 East 6th Street, South Boston.

Q. Are you a member of Local 82?

A. Yes, I am.

Q. And to your knowledge are you in good standing at this time?

A. Yes, I am.

Q. With regards to dues payments?

A. With my dues, yes. But I have been brought up on charges.

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[9] Q. Now how long have you been a member of Local 82?

A. Approximately around 25 years.

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[14] Q. How about the last meeting that you attended? When was that?

A. November 9.

Q. About how many members attended that meeting?

A. I'd say between 50, 60.

Q. How about the meeting before, the last meeting you attended before that, when was that?

A. That was in October. I think there was about 25 then.

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[38] Q. Did you see any notice of this meeting posted there?

A. Yes, I believe I got in touch with Bob Coleman.

Q. Who is Bob Coleman?

A. I was the shop steward then.

Q. And what happened?

A. And I finally got the notice.

Q. Posted?

A. Yes.

Q. And when was that?

A. A week before nominations.

Q. A week before that November 9 meeting?

A. Right.

• • • •

[42] A. Yes, They delegated me and a few other gentlemen to go in and negotiate with the business agent and the executive board to see what was going on, to see if we could get these members in here.

Q. Did you have your dues receipt with you, by the way?

A. Yeah, I believe I did.

Q. Now had this requirement that dues receipts be shown prior to admittance to the meeting, has that been the general practice of the union in prior meetings?

A. No, it hasn't.

Q. Has it ever been raised as a prerequisite for entrance at prior meetings?

A. No, I don't believe I ever recall it ever being raised.

Q. What was the general practice for members being admitted to a meeting?

A. Just come to the door and sign in and put [43] your Social Security number.

Q. Were you ever required to show your dues receipt?

A. I can't remember ever showing it, anybody ever asking me for it.

Q. At the previous meeting in October of 1980, were you at that meeting?

A. October? Yes.

Q. And when you entered then did you show your dues receipt?

A. No, we did not.

MS. NOONAN: Objection.

THE COURT: What ground?

MS. NOONAN: Again, your Honor, he is offering a conclusion. He said no, we did not. The question was "did you show your dues receipt"?

THE COURT: All right. I guess the question might have been ambiguous as to what you meant by "you." Break it down.

Q. Did you personally show your dues receipt?

A. No, I did not.

Q. Do you know from your own personal observation whether other members entered the hall without showing dues receipts?

A. The men that come in with me did not show [44] their receipts.

Q. How many men came in with you?

A. About 3, 4.

Q. Now—

A. I believe that was the month that we paid some of our dues.

Q. You paid you dues at the door?

A. Yeah, John Lynch went in and paid I believe it was me and Warren Watson.

Q. Had you ever before paid your dues at the door?

A. Yes, we have been doing it for years.

Q. Have you seen other members do that as well?

A. Yes, many of them.

Q. And were dues accepted at the door?

A. Yes, they were.

Q. By whom?

A. Business agents. Their own stewards would take it off them.

Q. Would they give you a receipt when you paid your dues at the door?

A. Yes.

Q. Now at this meeting any of the people who didn't have dues receipts offered to pay at the [45] door?

A. Yes, the ones they barred from the meeting that Sunday offered to pay their dues although each one of them said they were already paid up.

Q. Do you remember who was barred? How many can you recall?

A. There was about a dozen barred and I went in as their embassy to go in and try to straighten this out for them and I asked them to open their books up and see if these men are paid up and they says no, we don't have the records here and I said could you go back to the office and get the records and let these men in here and have a chance to nominate. No. And I says you are denying these men their rights. I spoke to George Harris and do you know what he told me?

Q. No.

MS. NOONAN: Objection, your Honor.

A. You don't have no rights.

THE COURT: Objection is overruled.

Q. What did he say?

A. You don't have no rights.

Q. So what happened at that point? Did they allow those members that didn't have dues receipts [46] into the meeting?

A. No, they weren't allowed.

Q. Did they allow them to pay their dues at the door?

A. No.

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[57] Q. Now after Griffiths read off the names of the 12 eligible candidates—

MS. NOONAN: Objection, your Honor, 16.

MR. PRESSMAN: Excuse me, your Honor, 16 eligible candidates.

Q. —what was your impression regarding the eligibility of other candidates?

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[58] THE COURT: Well, as I understand it, it is being not offered for the purpose of proving their eligibility but offered in relation to his state of mind with respect to his potential right to nominate other persons. I will receive it for that purpose.

Q. What impression did you have regarding the eligibility of candidates other than these 16?

A. The impression I had? I had the impression that's all the people that was eligible to run for office.

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[59] Q. When Mr. Owens was nominated for office did Mr. Griffiths or any other member of the executive board respond to the issue of his eligibility?

A. The issue was brought up that they didn't know if he was eligible.

Q. Did they state why they don't know whether he was eligible?

A. I would believe because they didn't have his record.

Q. What did Mr. Griffiths say regarding his eligibility?

A. I believe he said he would check on it the following day.

Q. Was anyone else nominated who wasn't eligible who was declared ineligible at that time?

A. Yes, I believe there was other people.

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[77] MR. STERN: We have a claim in this case that the 24-month rule violates both Title 1 in its discriminatory application and Title 4. The facts are related to each other. The Court has jurisdiction of this case.

THE COURT: I understand that position.

MR. STERN: And we seek to have adjudicated in these proceedings the question of the 24-month rule's reasonableness per se under Title 4 and we believe we have a right to have that adjudicated.

THE COURT: I understand that position but it is my present view that I will reject that position on the law.

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[135] JOSEPH V. MONTAGNA, Sworn
DIRECT EXAMINATION

BY MR. STERN:

Q. Would you state your name and address?

A. Joseph V. Montagna, 411 Furnace Brook Parkway, Quincy, Mass.

Q. Are you a member of Local 82?

[136] A. Yes.

Q. Are you in good standing?

A. Yes.

• • • •

Q. Did you see a notice of the nominations meeting of November 9?

A. Yes.

[137] Q. When did you see it?

A. Friday morning, it would have been November 7.

Q. Is that the first time you saw it?

A. Yes.

Q. Did you know from any source prior to that time where the meeting would be held, what time it would be held?

A. No.

Q. Was that the last work day before the meeting for you?

A. Yes.

Q. And prior to that no one had mentioned the time or place of the meeting to you?

A. No.

Q. Had you been to meetings previously?

A. No.

Q. You had never been to a union meeting before?

A. Not in Local 82. Prior to the time I was in Local 82 I was in another local and I have attended meetings but not in Local 82.

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[140] Q. And when you came to the meeting at some point Mr. Griffiths read off a list of eligible and ineligible persons?

A. Yes.

Q. And was your name among the list of eligible persons?

A. No, it was not.

Q. Did you draw any inference from that?

A. That I would be therefore ineligible to run, should I so desire.

Q. And would you have accepted a nomination for a position in the union if you had been nominated?

A. Yes.

• • • •

[141] Q. Was there an explanation given after the reading of the list as to why only certain persons were eligible to run for office?

A. It was my understanding—
Q. Was there an explanation in fact given?
A. Yes.
Q. Who gave the explanation?
A. Mr. Griffiths.
Q. And what explanation did he give?
A. That these people whose names—someone yelled, you know, why are these specific people being singled out, and his explanation was they were the only ones who had attended enough meetings in the past.

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December 23, 1980

[4] Q. [BY MR. STERN] State your name and address for the Court, please.
A. My name is Jerome Crowley. I live at 10 Bay State Boulevard in Peabody.
Q. And are you a member of Local 82?
A. Yes, I am, for the last eleven years.
Q. And are you a regular list man or a spare?

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[5] Q. Did you participate in the past election campaigns?
A. Yes, I have. The previous two elections, I voted for George Harris; and the last election, I try to participate —the last nomination, I try to participate.

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[12] Q. Now, you said you had attended meetings prior to the November 9th, 1980, meeting. What, if anything, was required of you to obtain entrance into the meetings?
A. A lot of times you were just let in. I had—about a year and a half before that, I wanted to go to a meeting, and I said to Mr. Griffiths I didn't have a stub and he told me that that's okay. You don't need it. It all depends on who you [13] are if you are not a troublemaker. I was told that about a year and a half, I believe.

Q. And, in fact, when you went to Union meetings prior to the November 9th, 1980, meeting, did you have to show your stub to get in?

A. Not really. Joseph Crowley, the sergeant at arms, really didn't bother to check the computer stub. In fact, after the nomination of November 9th, he told me after the meeting—

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Q. Did Mr. Crowley let you come into the meeting on November 9th without your computer stub?

MR. STERN: There are two Crowleys, your Honor. Joseph Crowley was the man you heard from his testimony as sergeant at the door.

[14] THE WITNESS: Sergeant at arms.

THE COURT: All right.

A. No, I was not let into the November 9th meeting because we were told that you had to have your computer stub to get it. But afterwards, I had a conversation—

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[113] ANTHONY J. COYNE, Sworn
Direct Examination by Mr. Pressman

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Q. And are you presently in good standing?

A. Yes, I am.

Q. Have you ever run for office in this Local before?

A. Yes, I have.

Q. When did you run for office?

A. Approximately three years ago. I ran for the office of president of Local 82.

[114] Q. Who did you run against at that time?

A. Mr. Harris.

Q. Did you lose?

A. Yes, I did.

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[139] Q. Just going back for a moment to that November 9th meeting.

Did you show your—when you were going to the meetings, have you shown computerized dues receipts?

A No, I'll show you what I show.

Q. What do you show?

A. I walk in and I show this to the master at arms—

Q. What is that?

A. This is my membership card from 1966 when I joined this Union.

Q. Does that indicate whether your dues are paid?

A. No. It's just a membership card stating that I joined this Union in 1966.

Q. Have you ever been required to produce your dues receipt—computerized dues receipt—to enter a meeting?

A. Not very often.

Q. Ever?

A. Not that I recall, no. I've always showed this. This is how I get into a meeting.

Q. Okay.

• • • •

[141] Q. Did you listen to the names of the people who were nominated—

A. Yes, I did.

Q. —as trustee?

Did you at any time hear the name of Joseph Crowley—and I'm not referring to Jerome [142] Crowley, but Joseph Crowley—being nominated for trustee?

• • • •

A. [Continued.] The master at arms, you're talking about. Joseph Crowley. He's the master at arms at the meetings. False eye?

Q. Do you know—I don't know.

Do you know that that's his name?

A. That's his name, right. Now I know who you mean.

Q. Did you ever hear his name nominated for—

A. No, he was never nominated.

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[253] KENNETH P. SPRAGUE, Sworn
Direct Examination by Ms. Noonan

Q. Mr. Sprague, would you state your full name and address for the record?

A. Kenneth P. Sprague, 324 North Quincy Street, Brockton.

Q. Are you a member of Teamsters Local 82?

A. I am.

Q. How long have you been a member?

A. Twenty-four years.

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[293] Q. Do you know if any of the membership in your group that you're steward for got notice at their homes?

A. No. They didn't.

• • • •

December 24, 1980

[2-144] [THE COURT] Now, there is also the problem with respect to what happens in the meanwhile, whichever way the preliminary injunction goes.

Now, when are the officers scheduled to—would they have taken office had I not entered the restraining order?

MS. NOONAN: Your Honor, the officers would have taken office, I believe I have indicated, the first Union meeting in January of 1981, assuming the ballots had been counted December 13th.

• • • •

[2-145] THE COURT: All right. Now, you see, that is an illustration of the problem that is concerning me. If you are going to be asking for considerable extensions of time, it is plain that the matter will not be resolved before the date that the officers would have taken office.

What happens under those circumstances?

MS. NOONAN: The officers who are presently—the incumbents continue to operate as I understand it. If I can confer with my client on that, your Honor—

THE COURT: All right.

MS. NOONAN: —I don't want to make a misrepresentation.

[Counsel conferred with client.]

MS. NOONAN: The present incumbents, [2-146] your Honor continue to operate. Of course, not all of the incumbents ran again, and I thing that was an indication that they did not wish to continue in office, but they will continue in office, the members of the Executive Board, until such time as their replacements are elected or until incumbents are reelected.

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[2-148] THE COURT: And that has led me to inquire, then, whether there was any controversy between you about what happens if this matter is still unresolved at the time when the period of tenure in office officially expires.

I have the answer from defense counsel that the incumbents would continue in office until their successors have been determined and qualified.

Is there any controversy over that? That's the question I'm putting at the moment.

MR. STERN: I think that unless the Court directed otherwise, that would be the situation.

THE COURT: Well, when you say "unless the Court directs otherwise," if you have some alternative in mind that the Court could direct, it might be well to advise me what it is.

MR. STERN: Well, it does appear that what is happening is that the incumbents who don't want to run again, who didn't want to run again, are vacating their offices and Mr. Griffiths is appointing people to replace them.

THE COURT: Well, that's—

MR. STERN: That's who Mr. Piemontesie [2-149] testified happened with him, that he has been appointed.

THE COURT: Well, all right. I understand. There may be a problem as to whether I should permit offices to be vacated and successors to be appointed while this matter is under sub judice.

MR. STERN: It also does appear that Union meeting are being suspended; that they're not having Union meetings. They've canceled the December one and said the work load associated with the election which is—I take it to be a reference to this trial. Now, that made it impossible to have one—or I don't know if they used the word "impossible" or not.

MS. NOONAN: Your Honor, could I address the question on Mr. Piemontesie's appointment?

THE COURT: You may.

MS. NOONAN: As I understand it, Mr. Catarino, the vice-president had vacated that office well before the November 9th meeting. It was vacant at the time of the nominations on November 9th. Mr. Piemontesie was nominated for the position of vice-president? Mr. Owens was, also. Mr. Owens was determined to be ineligible; [2-150] therefore, Mr. Piemontesie ran unopposed and was, in fact, under the Constitution and Bylaws, appointed to that position since he ran unopposed as a result of the nominations, unopposed by qualified candidates.

So, I don't think there's been any, you know, wholesale vacating of positions and appointments by Mr. Griffiths to those positions since the November 9th meeting.

And, in addition, the question of the—

THE COURT: Well, did the ballots that were circulated have provisions on them for voting for persons who are unopposed?

MS. NOONAN: No your Honor.

The names on the ballots are—I'll show you the ballot. The names that are on the ballots are for positions where there is a contest. There is no provision in the Constitu-

tion or Bylaws for writing in candidates or somebody who is running unopposed, writing in a name. I think that's clearly what this case is all about. Mr. Lynch claims he was running for secretary/treasurer, and it would have been written in.

THE COURT: It strikes me that there may be an irregularity there.

[2-151] MS. NOONAN: Why, your Honor?

THE COURT: Well, the mere fact that no other nominations are made is not equivalent to election under ordinary rules of order.

MS. NOONAN: Your Honor, in the Constitution and Bylaws of the Union it provides that if you are nominated and you have no opposition, then you are automatically elected to that position.

THE COURT: Well, all right.

I'm not undertaking to rule on that question at the present time. If there is a controversy over it, I'll deal with it when it's presented to me.

• • • •

January 9, 1981

[4] MS. NOONAN: Yes, your Honor. In essence I asked for the conference to let you know that by vote of the executive board last night I was authorized to advise the Court that Local 82 is prepared to run another nomination meeting, another election by mail ballot, send notices out to all members specifying the eligibility requirements for running for office as I set out in the letter. I did not attempt to be all-inclusive in the letter as to what would be contained in those notices. In fact, I think I would be prepared to say that we would give the [5] notices as required by the Constitution and bylaws of the union as requested by the plaintiffs in their modified motion for preliminary relief.

With respect to the good standing question of Mr. Lunnin, Mr. Owens and Mr. Bates, I'm not quite sure what

Mr. Stern means in raising that question. Mr. Lunnin right now has an appeal pending before the joint council as to his disciplinary matter. I have been advised that a hearing was scheduled on that matter for January 13. Mr. Lunnin requested a postponement and it was rescheduled to accommodate his schedule for the evening of January 14.

So the question as to the disciplinary matter, I do still see that as an open issue and I did not attempt to resolve that in the letter. I am focusing merely on the question of the nominations and the election. And so I really don't understand what Mr. Stern means with respect to the good standing question of Mr. Lunnin, Owens and Bates.

THE COURT: I understand him to be raising the question whether it would be the union's position that they were or that they were not eligible (a) to participate in the nomination [6] meeting, (b) to be candidates for office.

MS. NOONAN: Okay. With respect to their right to participate in a nomination meeting which will be held, the second nomination meeting I take that to mean, then there is no restriction on Mr. Lunnin or Mr. Owens or Mr. Bates attending that meeting at this point in time. All members will be required to have their dues paid up through the prior month to attend that meeting. As I have indicated in my letter, the union is prepared to accept dues payments at the door if that is required to have members bring themselves into good standing.

The disciplinary action imposed on Mr. Lunnin, as I have indicated to the Court, there will be no implementation of that discipline while this matter is pending before the Court. So he is free to attend a nomination meeting and so too is Mr. Owens and so too is Mr. Bates.

* * * *

[13] With respect to my suggestion that Joint Council 10 conduct the nomination and the whole election proceeding, I was suggesting that really to—in an effort to

suggest to the Court that the incumbents are prepared to allow some other body, the joint council, to run their meeting. I see nothing in the law that requires or prohibits my clients from running the meeting themselves and they have now turned to a higher body in the union or are prepared to turn to a higher body in the union and asked them to run the meeting for them if they will. I take it from Mr. Stern's comments that these are the issues that are in dispute and I don't think that he and I will be able to resolve them.

THE COURT: Well, all right, I understand that you may not be able to resolve all of them. Let me express my understanding of the situation in another way. Certainly you are free by stipulation to alter the context in which the Court is being asked for preliminary relief and it may be that that altered context would be one that would affect the Court's determination as to whether preliminary relief of any kind was needed [14] and appropriate. And I am now understanding you to say not that you are proposing, if you will, a settlement which must be accepted as a package or not; rather you are proposing to make some stipulations of record which the Court would now take into account in determining whether it went far enough toward meeting the claims that were asserted that the Court should not intrude with preliminary relief. And you may do that and I will then have to hear from opposing counsel as to why they assert that it does not go far enough and hear your arguments as to why it does and make a decision on the matter.

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MS. NOONAN: Yes, your Honor, and—I understood your temporary restraining order to require the parties to hold the status quo.

THE COURT: Right.

MS. NOONAN: Threfore we are not implementing—the union is not implementing any [15] of this at this point in time. I would suggest to your Honor that we have proposed dates for the nomination meeting and the

election far enough in advance. I am proposing that there be a nomination meeting the third Sunday in March and an election, a mail ballot election to be concluded April 25, I believe that's the Saturday following. And there is that concern, your Honor.

Also, the concern of the executive board in instructing me to approach the Court with the stipulations is really to cut short the matter in as complete a fashion as we can, understanding that there are still some issues that divide the parties, and I would like therefore to have as expeditious a ruling as I can so that we don't all now spend our time writing briefs and reading transcripts which will not really bear on the issue if you decide to hold on to the question of the 24-month rule. I see that as really the basic question here with respect to the nomination and the eligibility, and the election proceeding.

If you determine that in fact the stipulation I am prepared to make addresses most, if not all of the requests for relief in the modified motion for preliminary relief and if in [16] fact you say but I still think I have jurisdiction under Title I of the 24-month continuous good standing rule based on certain allegations in the plaintiff's complaint, I think we can address that narrow issue and I think hopefully have that resolved quickly enough so that we can then proceed with a nomination and an election in March and April. That's my hope so that we all don't waste your and our precious time as well as the energies of everyone concerned.

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[36] THE COURT: That is another matter. Now Mr. Stern, as I understand Ms. Noonan's position she is prepared to make a stipulation at this point which she asserts will assure the exercise of the rights to nominate, vote, participate in the election in all respects other than being a candidate. And she asserts that being a candidate is not a Title 1 right. Do you contest that proposition?

MR. STERN: Yes, your Honor.

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[8] THE COURT: Well, I must issue an order, of course, because I have to modify the present order and if you request a decree on all of the terms of the election, I will have to issue an order that determines the matter as to which there is not an agreement. And I will make findings to the extent that they are relevant to the matters as to which I am ordering something that is not agreed to or has not been stipulated to.

[9] MR. STERN: I am a little confused by the phraseology of that as to—

THE COURT: Let me put it to you another way. I am here for the purpose of deciding issues that are before me and that is what I will do. I will not write an opinion that tries to influence the election.

MR. STERN: I am not asking for that.

THE COURT: All right.

MR. STERN: What I am asking for is there is no agreement per se at this point. There is a stipulation of the defendants.

THE COURT: And I will have to resolve any questions as to which there is no agreement and we will have to make findings to the extent they are relevant to the decision I make in resolving those issues.

MR. STERN: Now, I certainly don't want to put the Court through unnecessary tasks but it will not be contained in an order because I make an agreement and therefore not enforceable and therefore attackable by any member of the union in a post-election proceeding before the secretary, by the Secretary of Labor. Then I am in a position where it is irrational for me to make any agreements. If what we agree upon will be contained in a court order and therefore have the sanctity of a court order and enforceability of a court order,

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[27] THE COURT: Well, don't I have to address that question if she is right about that? Then any order I

issue modifying the terms of the election from what she proposes would be appellative because I had no jurisdiction to do it so before I enter any order I must face the question whether I have jurisdiction to hear it.

MR. STERN: No. I think what she is saying is if you enter an order consistent with her stipulations—

THE COURT: But if I enter an order inconsistent with her stipulation, then what?

MR. STERN: Then you must address the question of jurisdiction.

THE COURT: Well, you are asking me to enter an order inconsistent with her stipulation?

MR. STERN: Yes.

• • • •

January 23, 1981

[2] THE COURT: Now let me say that I had entered the order staying the discovery proceedings because it seemed to me desirable to do so in the hope that we could reach a stipulation, that the parties could reach a stipulation with respect to the manner of [3] conducting the election. I now believe that is going to be impossible and that I will be required to make some rulings about the terms of any election and under those circumstances I think the first issue we should address is whether I should not vacate my order staying discovery, require the discovery to proceed, and the reason I am thinking that may be appropriate is it may well be that one or more of the issues as to the form and manner of conducting the election that I will have to decide because the parties have not been able to agree upon it will involve determination of two issues, one a factual issue and second a legal issue, the factual issue being associated with the question whether the 24-month rule has discriminatory impact against spares at least and perhaps in some other way and the legal issue being whether Title 1 rights include protection against such a discriminatory impact of a rule of eligibility for office either on the ground that that in

itself is a Title 1 right or on the ground that the right of participation in the nomination process, nomination and voting process, is denied if an eligibility rule makes it essentially a worthless right.

[4] Now I am not ruling, you will understand, on either the legal question or the factual question. If the additional discovery would lead me to make fact findings that avoid that legal issue I would not need to reach the legal issue. It does seem to me the legal issue is a sufficiently troublesome one that it therefore makes more sense as a matter of the handling of this lawsuit expeditiously to address the discovery question first rather than addressing the legal issue first because after all, after I address the legal issue that will not firmly and finally settle it, however I may resolve it.

Now that leads me then to inquire of the parties what your positions are with respect to the question I have just raised. Is it not most appropriate for me today to enter an order vacating my stay of discovery and cause that discovery to proceed? I would be happy to be advised that my assessment that the possibility of some stipulation between you about the way of conducting the election is erroneous and you can reach some agreement but I am not expecting that and given that expectation I would like you to address the question whether I should not merely [5] lift the stay of discovery and have that completed before I hear you on whatever issues may arise as a result of the completion of the discovery with respect to the election.

Now I recognize that that will delay for a certain period of time whatever arrangements we might make about an election. It seems to me, however, that if the plaintiffs, who after all are the parties most severely harmed by the delay, if the plaintiffs are insisting upon their right to discovery recognizing that that necessarily will produce this potential for some delay in the election, that I would recognize their right to the discovery and make that the first step.

MR. STERN: On those points, your Honor, it does seem to me that our primary position with reference to the 24-month rule is not one that—it is that the Court may consider it as a Title 4 claim.

THE COURT: You are not taking the position that I can consider it as a Title 1 claim?

MR. STERN: No, we are taking that position. I said, I think, our primary position is that it's appropriate for the Court to exercise its discretion to consider it as Title 4 claim in [6] the circumstances and situation here where there were Title 1 claims that it is appended to and it would resolve the matter in a single proceeding. Since that is a matter of discretion I am somewhat tempted to throw the ball back in the Court's Court in a sense on the question of discovery to await the Court's position on the discretionary aspect of it. I believe we have a right to have the Court—

THE COURT: Well now, I'm not sure I am understanding you but I am not prepared to rule on any Title 1 assertion on your part with respect to the 24-month rule without the benefit of the discovery and whatever evidence may be produced before me. So unless you are telling me that you are prepared to waive that claim for the purpose of this preliminary relief at least, then I don't see how you can throw the ball back in my Court because I have got to have the product of that discovery and whatever evidence it produces before I am prepared to rule on the facts that would be essential to raising the Title 1 legal issue.

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[31] MR. WITLEN: Thank you, your Honor. The Court should be reminded as well as plaintiffs [32] should be reminded that the original complaint asks no more than that the local union conduct an election. Now the local union is willing to bring in a third party, an outside party. Obviously if a member of the local union executive board is also a representative of Joint Council 10 that local union representative will not be assigned by

the joint council to have any responsibility for conducting the election. The Teamster constitution reflects the requirements of due process that are set forth in the statute.

THE COURT: Well, in that respect I think it would be helpful if that is a part of the understanding with which you make the proposal that that be made clear in the stipulation so that—

MR. WITLEN: Defendants so stipulate, your Honor. It is so fundamental as to defy description. We are not attempting to defraud this Court by having the same people conduct an election by putting on a different hat and saying sorry, I am no longer Bart Griffith, Local Union 82 officer, I am now Joint Council 10 representative. But we will stipulate that none of the officials of Local 82 will have anything to do with the supervision provided by Joint Council [33] 10. The Teamster constitution provides in several places that members involved in charges or internal hearings cannot serve on trial panels. The statute requires such prohibitions. The cases which deal with the enforcement of the statute under Section 101(a)(5) are clear that merely by having one of the officers involved in a proceeding does not disqualify everyone else in the local union from participating in an internal union proceeding. This statute was designed to foster democratic procedures within the union and if every time a dispute arises within the union a Court takes it away from the union then those democratic procedures are never going to develop and a legion of cases can be cited for that proposition.

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February 20, 1981

[2] THE COURT: Good afternoon.

THE ATTORNEYS: Good afternoon.

THE COURT: Let me first advise you of some rulings I will make that will remove some of the issues that are addressed in your memoranda and then come to other issue that I want to discuss with you.

The defendants of course have objections on want of jurisdiction. I have considered those. They are denied. You also have objections of mootness, I suppose it might be called. Perhaps you argue jurisdictional, based upon your stipulations and based upon the Court's rejection of some of the plaintiff's requested relief. Those objections of the defendants are denied. It seems clear to me they lack merit. I am proposing—I have found violations of Title 1 rights and I am proposing to order some conditions beyond those to which the defendants have stipulated and I am thus finding that there are violations which your stipulations do not cure even apart from the question that if there were violations and you now [3] offer stipulations not to continue the violations that still would not deprive the Court of jurisdiction. Moreover, that applies as well to your argument that there is no basis for the preliminary relief proposed in paragraph 10 of the tentative order. Violations having been found, the Court has both jurisdiction and I think responsibility for granting the preliminary relief enjoining further violations. And that would be true even if you now proposed stipulation that was in all respects satisfactory.

But beyond that, because I find the stipulation does not go far enough it is plain to me the argument lacks merit. Likewise because I am rejecting plaintiff's requests in a number of respects I therefore lack jurisdiction plainly, it is an argument that the Court must either accept the plaintiff's position or the defendant's position and when the plaintiff has asked too much and the defendant has offered too little it is plain that the Court is not restricted to doing an injustice by selecting between the two untenable positions. The Court may instead order what it finds appropriate on the facts of the law it finds applicable to the case.

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[10] MR. WITLEN: Your Honor, I don't know whether you want to skip ahead to paragraph 9 but

I should advise the Court that not only does the general president have problems complying with that but also Joint Council 10 has problems.

THE COURT: I think it may be well for us then to go forward to that issue and address it.

Now by reason of the fact that I am proposing to order some conditions beyond those that were included in the stipulation it seems to me I must have some undertaking from any third party who is to conduct this election that it will be conducted in accordance with this order. Otherwise there is too much risk that we have very extensive future controversy about enforcement of the Court's order with possibilities of not one additional election but more if there were problems about it. It seems to me I must have an undertaking from anyone who is going to conduct the election that it be done in conformity with the Court's order. If it were being done by a party we would have it in effect by the appearance before the Court and the parties being bound by the Court's order. If we are having a third party do it, not a party to the litigation, that party [11] must be subject to the order of this Court to do it in accordance with the order of the Court and it seems to me the only way to accomplish that or at least the best way to accomplish it is by a formal undertaking by that party.

Now if Joint Council 10 is not willing to do that then it seems to me I have to hear the parties on what other arrangements to make and order some third party who is willing to make that undertaking to conduct the election.

Now I recognize that Joint Council 10 is not a party and therefore counsel are not in a position to speak for Joint Council 10 but if you tell me that Joint Council 10 appears not to be willing to make this undertaking then I think I must proceed to hear you promptly on what alternative arrangements the Court should consider for supervision of the election.

MR. WITLEN: Although I do not represent Joint Council 10, I am prepared to tell the Court that Joint

Council is not willing to undertake the responsibility or sign any document which might render it possibly liable to a contempt proceeding in this Court or any other type of proceeding in the event the election is run amiss for some [12] reason or another.

THE COURT: Then isn't it clear I must order somebody else to conduct the election who is willing to undertake to do it in accordance with the Court's order?

MR. WITLEN: We understand your position, your Honor, and unfortunately that's the Joint Council's position.

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[46] MR. WITLEN: The Court asked for us to [47] advise the Court as to whether in lieu of the changes to the proposed order the local union would wish to have reference made to the fact that many of the items in the order were derived from the local's stipulation and in view of the changes that are being made by the Court the local union would not like any reference to the fact that part of the order is derived from its proffered stipulation.

THE COURT: All right, I will remove that.

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February 27, 1981

[9] MR. WITLEN: At this stage of the proceedings the Defendant's stipulation that was ordered—that was offered in early January have effectively been withdrawn by the failure of the parties to agree that the stipulation is an adequate substitute per order of the Court.

THE COURT: Now, that I do not understand because I questioned you explicitly about whether it [10] was an offer of settlement or a binding stipulation. And I got the answer, "It is a binding stipulation."

MR. WITLEN: As offered, not as modified.

THE COURT: Well, all right, I understand that. One of the things that is very clear from that is that you have

stipulated that a new election would be conducted; that the election that was conducted to the nomination meeting of November 9, would not be longer asserted to be valid. Now, are you undertaking to withdraw that stipulation?

MR. WITLEN: If the local union is willing to stipulate to conducting an election under the terms set forth by the local union, that is, without the supervision and without an order being issued directing the local union to conduct an election in a certain manner.

THE COURT: Now, I want to be very clear about this. You presented to me an argument that you were making not an offer of settlement but a binding stipulation, and on the basis of that you argued that I lacked jurisdiction.

MR. WITLEN: That's correct, your Honor.

THE COURT: Now, you are undertaking to withdraw from that binding stipulation?

MR. WITLEN: The stipulation as offered we [11] are willing to stand by, but—

THE COURT: I think that you are simply putting the proposition that it was only an offer of settlement, and if not accepted according to its exact terms, then it was withdrawn. Now that is basically inconsistent with your contention that after you filed that stipulation, I lacked jurisdiction to proceed. I think that you are trying to withdraw from a binding stipulation you made when I made it very explicit. I want to know whether it is a binding stipulation or an offer of settlement? If it were only an offer of settlement, then the position that you are now taking would be appropriate. I got the other answer. It is not an offer of settlement, it is a binding stipulation, and on the basis of it, an assertion of lack of jurisdiction in this Court to order anything else. I have overruled that assertion. That does not give you an opportunity to withdraw a binding stipulation. If you wish to withdraw that binding stipulation, you are going to have to seek my permission and show good cause for doing so, otherwise I will not permit it to be withdrawn.

MR. WITLEN: Your Honor, if I could confer with co-counsel for a moment?

THE COURT: You may.

[12] MR. WITLEN: It's the Defendant's position that a stipulation was offered. And there were certain terms set forth in that stipulation. The terms for conducting the election have now been modified by the Court. While Defendants will stand by the initial stipulation, the Defendants are not willing to stipulate to the additional terms that are being required—

THE COURT: That I understand and I'm not suggesting that you are foreclosed in any way from contesting the Court's ordering of somewhat different terms than those you proposed in the stipulation.

MR. WITLEN: I think that we are now all in agreement, your Honor.

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[14] MR. STERN: They have stipulated to an election, so I assume that cost—

THE COURT: Excuse me. They have not stipulated to an election on the terms that I will order. And if my order should be overturned on an appeal, then the election that will have been conducted under my order will also be void as well as the previous election, which we have in effect have a stipulation, that is void. That would mean that whatever has been expended in conducting this election will have been lost. Is that not the kind of expense and loss that a bond, under Rule 65, is supposed to cover?

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[42] THE COURT: All right, now, if you wish me to do so, after I tell you the circumstances as I see them, I will allow the motion to amend the complaint. I will deny your request that I denied

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March 6, 1981

[118] THE COURT: All right. You may draft a proposal. Now let me make one other suggestion and invite

your reactions to it briefly if you wish to react at this point. If neither of the parties is able to present to me a proposal for [119] some third party to conduct the election that seems acceptable I will want to consider the appointment of a special master and I would inquire whether you wish to take positions on that question whether it's an appropriate thing for the Court to do at this point. I raise it because I want to move this along to final determination as quickly as possible and if the further proposal that the plaintiffs are expecting to present does not produce an acceptable proposal then I will want to move quickly to consider whether I should appoint a special master.

I am interested in the positions of the parties both with respect to whether that should be done and if so, whether you would wish to make recommendations as to who it should be or whether that matter should be handled entirely by the Court without consultation with the parties.

MR. STERN: I think for the sake of sufficiency and the Court simply doing that—that would be an acceptable method to us and the Court simply selecting and appointing someone would be satisfactory to my clients.

MR. WITLEN: Your Honor, it remains our position that the Court does not have the [120] authority to dictate the terms of the election. The union has stipulated to conduct an election under its terms and under its supervision so it would be a gross misrepresentation if we were to sit here and let you conclude from our silence that we were finding acceptable either the third party that Mr. Stern comes up with or the special master. We do not believe that the Court has the authority to order an election under these circumstances let alone to dictate the terms of the election.

THE COURT: That I understand but if I conclude, as I have done tentatively, that I should order an election, I am also offering you the opportunity to aid the Court in shaping the terms of that order, one factor among the

terms being who will supervise the election and I'm not asking you to waive your basic exception to the Court's ordering it but if you wish to make recommendations to the Court as to how the Court should proceed with respect to selection of the master if we come to that point then I welcome your comments.

MR. WITLEN: With that understanding, your Honor, defendants would represent that so [121] long as Mr. Stern and the Court do not come up with a member of the plaintiffs to supervise the election we are not going to have any objection to any person that is designated to run the election.

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PLAINTIFF'S EXHIBIT NO. 5

[Document Typed for Printing]

Nov. 9, 1980

Bart A. Griffiths
Secretary-Treasurer and
Business Agent
142 Robertson St.
Quincy, Mass. 02169

Executive Board Teamsters Local 82
142 Robertson St.
Quincy, Mass. 02169

Dear Gentlemen:

I'm today charging Robert Lunnin with:

1. Abuse of fellow members and officers in Meeting Hall.
2. Misconduct.
3. Action which is disruptive of, or interferes with the performance or obligations of members or Local Union and its officers.
4. Threatening harm and assault against Secretary-Treas. and Business Agent also family and property.

cc: Robert Lunnin
Executive Board
Mr. William J. McCarthy, President
Teamsters Joint Council 10

Reg. & Ret 652201

PLAINTIFF'S EXHIBIT NO. 6

[Local Union Letterhead Omitted In Printing]

Nov. 25, 1980

Robert Lunnin
761 East Sixth Street
South Boston, Mass. 02127

Dear Sir:

The following is the Executive Board Decision from the Trial of Nov. 24, 1980.

Charge No. One (1). The Executive Board fines you at fault and fines you one hundred and fifty dollars ($150.00) payable on or before Jan. 6, 1981, according to Article ninteen Section nine of the International Constitution.

Charge two and three. The Executive Board fines you at fault, and suspends you from attending Monthy Meetings for a period not less than two years effective Nov. 24, 1980. According to Trails and Appeals Article Ninteen.

The Executive Board Also wishes to inform you that you have the right to appeal this decision to the Joint Council No. 10, according to the International Constitution Article Ninteen Section Two.

Fraternally yours,

George Harris
Chairman of the Executive Board.

cc: L/C 82
J/C William McCarthy

Reg. Ret. (652205)

PLAINTIFF'S EXHIBIT NO. 23

[Local Union Letterhead Omitted in Printing]

Dec. 15, 1980

PLEASE POST

Notice to Members of C. Walsh

This letter is to inform you that Gerald Owens is not the Shop Steward for C. Walsh Movers.

Mr. Owens was removed from this position Dec. 15, 1980/

George Harris
President and
Business Agent

Bart A. Griffiths
Secretary-Treasurer
and Business Agent

PLEASE POST

PLEASE POST

PLAINTIFF'S EXHIBIT NO. 35

[Document Typed for Printing]

26

Monthly Meeting Oct. 12-1980

George Harris	015-28-7130
Bart A. Griffiths	029-38-6304
John J. Gately	030-32-6523
Richard J. Thompson	017-34-3685
Kevin M. Sullivan	029-34-5359
Gerald Patterson	031-42-4901
Philip V. Piemontese	029-28-4151
Jerry Crowley	016-32-6121
Joe Cook	022-48-4957
John Perry	015-42-4709
Jim Hayes	027-30-3282
Anthony J. Coyne	028-28-1893
Robert Lunnin	010-24-6452
John Early	380-16-1854
Michael J. Dowling	032-26-6781
Joe Scannell	018-22-1125
John Lynch	023-26-3976
Robert Byrnes	029-12-2978
Kenneth Sprague	010-24-6750
William Pye	014-48-1714
Joseph Crowley	091-14-2068
Coleman Halloran	031-30-8216

Oct. 12/1980

Warden Joe Crowley

PLAINTIFF'S EXHIBIT NO. 36

[Document Typed for Printing]

Nov. 24, 1980

Meeting was opened at 6:30 P.M.

Executive Board members present were

George Harris, President Business Agent,

Philip Piemontese, Vice President.

Paul Maquire, Trustee.

John Gately, Trustee.

Also present Bart Griffiths—Secretary Treasurer,

Robert Lunnin, Member, James Hayes member.

Bart Griffiths, charges Brother Lunnin charges with misconduct at Sept., Oct. Nov. meetings. Bart Griffiths appeals that Brother Lunnin act in an orderly Fashion at Future meetings. Charge No. 4 has been dropped by Brother Griffiths.

Kevin Sullivan, Member and Trustee appeared as witness for Brother Griffiths stated that Brother Lunnin acts disorderly at meetings and using abusive Language to executive board.

Brother Lunnin has stated his attendance of meetings for the past year and states that the executive board has not been Representing the members behalf. He states that executive board took away 40 hours from spares Health & Welfare *Brother Lunnin expresses his feelings* graphically.

Brother James Hayes, Member appeared as witness for Brother Lunnin.

Brother Hayes states that executive Board by-passes members. He states that *members are scared to speak*

out. He states that members are *afraid to come forth.* So Brother Hayes and Brother Lunnin are representative of such members.

Brother Robert Colburn, Eastern Transfer, member and shop steward appeared as witness For Brother Lunnin.

To Charge I he states Brother Lunnin did not abuse Fellow members and officers

To Misconduct charge he states everybody was out of order.

Testimony was closed and meeting was adjourned at 7:05 P.M.

Recorded by Philip Piemontese
Vice President,
Local 82
142 Robertson St.
Quincy Mass.

DEFENDANT'S EXHIBIT 47

[Local Union Letterhead Omitted In Printing]

Dec. 5, 1980

IMPORTANT ELECTION NOTICE

ANY MEMBER WHO HAS NOT RECEIVED A BALLOT, SHOULD CONTACT TEAMSTERS LOCAL 82-773-6793-4 for InQUIRES OF A NEW BALLOT.

TELEPHONE NUMBERS 773-6793
773-6794

Bart A. Griffiths
Secretary-Treasurer
and Business Agent

PLAINTIFF'S EXHIBIT NO. 54

[Joint Council Letterhead Omitted In Printing]

15 December 1980

Dear Sir and Brother:

Because of legal action pending in the United States District Court, the hearing, scheduled for Tuesday, December 23rd, 1980, on the matters listed below have been cancelled.

a) Protest by Brother James A. Crowley, jointly with five other members of Local 82, of the procedure of Nominations at Teamsters Union Local No. 82's meeting on Sunday, November 9th, 1980.

b) Appeal of Brother Robert E. Lunnin from a decision of the Executive Board of Teamsters Union No. 82 in the matter of charges against him relative to alleged misconduct at union meeting and alleged verbal abuse.

With best wishes, I am

Fraternally yours,

William J. McCarthy
President

copy: Mr. Jerome A. Crowley, et al., c/o Mr. Robert Lunnin, 761 East 6th Street, South Boston, MA 02127, Certified P20 3705905, return receipt requested.

Mr. Bart Griffiths, Secretary-Treasurer, Teamsters Local Union No. 82, 142 Robertson Street, Quincy, MA 02169, Certified P20 3705906, return receipt requested.